SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 566.

THE UNITED STATES, APPELLANT,

vs.

ARTHUR B. BARRINGER.

APPEAL FROM THE COURT OF CLAIMS.

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19709—02

1 Court of Claims.

ARTHUR B. BARRINGER
vs.
THE UNITED STATES. } No. 21940.

I.—*Petition.*

The claimant, on the 20th day of June, 1900, filed his preliminary petition.

On July 26, 1900, the claimant, by leave of court filed his completed petition, which is as follows:

To the honorable the Court of Claims:

The claimant, Arthur B. Barringer, respectfully represents:

The claimant has been at five different times within six years last past a compositor in the Government Printing Office, serving at each time of his employment for a fractional part of a year. The periods during which he was so temporarily employed were as follows:

December 31, 1895, to February 26, 1896, inclusive.
July 2, 1897, to July 31, 1897, inclusive.
December 10, 1897, to July 16, 1898, inclusive.
October 24, 1898, to March 4, 1899, inclusive.
October 28, 1899, to April 27, 1900, inclusive.

2 By the provisions of paragraph 10 of the act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes," approved June 11, 1896, Supplement to Revised Statutes, volume 2, page 526, he became entitled during each period of his employment to leave of absence, with pay, for thirty days in each fiscal year, or to pay for pro rata leave for any unused leave of absence. He was not, however, during any of the times of his employment as aforesaid allowed any leave of absence or any pay pro rata for unused leaves of absence.

He has made application to the Public Printer, and the Auditor for the State and Other Departments, respectively, for pro rata payment for his unused leaves of absence, but both have declined to allow him the same, the former on the ground that temporary employees have never been allowed leaves of absence, and the latter on the ground that he had no records in the office throwing light on the claim.

During the entire period of his service he was paid at the rate of four dollars and twenty cents ($4.20) per day. He claims pay for a total of one (1) year eight (8) months and twelve (12) days of work at thirty (30) days each year, amounting in all to fifty-one (51) days, at four dollars and twenty cents ($4.20) a day, amounting to two hundred and fourteen dollars and twenty cents ($214.20).

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant

is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims two hundred and fourteen dollars and twenty cents ($214.20).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

George A. King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me this 24th day of July, 1900.

MARTHA M. BECK,
Notary Public.

3 II.—*Traverse. Filed October 22, 1901.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assist. Attorney-General.

4 III—*Findings of fact and conclusion of law (as amended), filed December 2, 1901.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT:

I.

The claimant, Arthur B. Barringer, was from time to time employed as a compositor in the Government Printing Office during the following periods:

December 31, 1895, to February 26, 1896, inclusive;
July 2, 1897, to July 31, 1897, inclusive;
December 10, 1897, to July 16, 1898, inclusive;
October 24, 1898, to March 4, 1899, inclusive;
October 28, 1899, to April 27, 1900, inclusive,

aggregating one (1) year eight (8) months and twelve (12) days.

II.

During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months.

III.

He was not during any of the times of his employment allowed leave of absence or pro rata pay for leave of absence. If allowed leave of absence of thirty (30) days a year, he would have been entitled to fifty-one (51) days' leave.

If instead of taking such leave he had been paid pro rata for the same, he would have been paid three dollars and twenty cents ($3.20) a day for thirty-six (36) days and four dollars ($4) a day for fifteen (15) days, amounting to one hundred and seventy-five dollars and twenty cents ($175.20).

IV.

The claimant did not, at any time during his several terms of service, set forth in finding I, apply for a leave of absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave.

5 V.

All employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all accrued but unused leaves of absence. The last of the appropriations for such unused leaves was that of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60), made by the act of July 19, 1897 (30 Stat. L., 134), and was based on an estimate of the Public Printer, who in transmitting the same to the Senate informed that body that it included "many employees whose terms of service in the office were only for periods of less than one year," and that "the amounts of pro rata leave which accrued to such persons are herewith included in the respective years in which they were earned."

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $175.20.

By THE COURT.

IV.—*Opinion of the Court.*

HOWRY, J., delivered the opinion of the court:

This case presents the question of the right of a temporary employee of the Government Printing Office, serving for fractional parts of a series of years, to pro rata pay for unused leaves of absence accumulated during

the different periods of his employment. The issue involves a construction of the public printing act of June 11, 1896 (chap. 320, par. 10, 2d Supp. Rev. Stat., 526), and derives its chief importance from the circumstance that the cause is one of a class of cases affecting many hundreds of employees of the printing office in their relation to the Public Printer.

Plaintiff served between December 31, 1895, and April 27, 1900, for five separate periods of time, the shortest of which was twenty-nine days, and the longest seven months and six days. He was paid at the rate per day fixed by law. He was not granted any leave of absence nor pay for any unused leave whereby he was prevented from increasing his compensation for the length of time he might have been absent. He now sues for pay at the rate he was paid during the entire period of his service, or for a total of one year eight months and twelve days of work, at thirty days each year, amounting in all to fifty-one days.

In Harrison's case (26 C. Cls. R., 259) it was held that the intent of the legislation authorizing leaves of absence and regulating pay was only to grant leaves of absence but not to grant double pay for such leaves as the employees might take under the law but did not receive. That decision was founded on statutes which authorized the Congressional (now the Public) Printer to employ at such rates of wages as he might deem for the interest of the Government and just to the persons employed, such proof readers, compositors, pressmen, laborers, and others as might be necessary (sec. 3763, Revised Statutes); which authorized leaves of absence, with pay, not exceeding fifteen days in any one fiscal year, to employees by the piece or otherwise after the service of one year, under regulations and at such time as the Public Printer might designate (act of June 30, 1886, chap. 572, 1st Supp. Rev. Stat., 499), and which made it
6 lawful to allow pro rata leave to those serving fractional parts of a year, the annual leave being in the meantime extended to thirty days in each fiscal year (act of August 1, 1888, chap. 722, 1st Supp. Rev. Stat., 600).

While the decision in Harrison v. The United States is accepted by learned counsel for plaintiff as a correct exposition of the law at the time it was rendered, nevertheless it is contended that subsequent legislation has made the views there announced inapplicable to a claim for unused vacation pay. The subsequent legislation vital to be considered is as follows:

"The employés of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year. Such employés as are engaged on piecework shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: Provided, That those regularly employed on the Congressional Record shall receive leave with pay at the close of each session, pro rata for the time of such employment: And provided further, That it shall be lawful to allow pay for pro rata leave to those serving fractional parts of a year; also to pay for pro rata leave of absence to employés of the Government Printing Office in any fiscal year notwith-

standing the fact that thirty days' leave of absence with pay may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may hereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence." (2 Supp. R. S., 526, par. 10.)

This act of June 11, 1896, allows leaves of absence with pay to an extent not exceeding thirty days in any one fiscal year to the employees of the Printing Office, which includes those serving fractional parts of a year as well as day hands and others, but, like preceding statutes, under such regulations and at such times as the Public Printer may designate. Congress was again careful to limit the period of absence in any event, and at the same time to remit to the discretion of the Public Printer the duty of saying when an employee might take his vacation within the fiscal year. The right of the Public Printer to make rules and regulations in the premises was continued by the new statute in the same language as that employed in the old, so that the act under which this suit was brought was enacted with knowledge by Congress that under the rules and regulations which had been prescribed for the administration of the Printing Office the Public Printer might control the time of leaves and refuse the same in an exigency.

7 The second proviso in the act of 1896 plainly confers the right upon those serving fractional parts of a year to leave of absence with pay. Thus, if an employee serves six months he is ordinarily entitled to fifteen days' leave of absence with pay just as an employee serving a year continuously is entitled to thirty days' leave with pay. The language in this second proviso is new in that it provides for pay for pro rata leave to those serving fractional parts of a year. The provision was not in any of those acts under which Harrison's case was decided. Nor does the same phraseology appear in the act of June 19, 1894 (2 Supp. R. S., 193), which was reenacted in the act of March 2, 1895 (chap. 187, par. 3, 2 Supp. R. S., 427).

The public printing acts summarized in section 23, 2 Supp. R. S., 344, contain a proviso that it shall be lawful to allow pro rata leave to those serving fractional parts of a year. There is an omission to state that it shall be lawful to allow pay for pro rata leave to those serving fractional parts of a year, and it is open to question under that kind of a proviso whether an unused leave could be paid for by an equivalent in money.

In saying "that it shall be lawful to allow pay for pro rata leave" the new statute imposed the general obligation on the Public Printer to allow the pro rata leave of absence with pay in kind on those serving fractional parts of a year. Though this statute is only permissive in terms the authority must be construed to be a duty in general. The words "it shall be lawful" are mandatory. (Mason v. Fearson, 9 How.,

248; Supervisors v. United States, 4 Wall., 435; Mayor of New York v. Furze, 3 Hill, 614; Bell v. Caldwell, 107 Pa. St., 48; Stines v. Franklin Co., 48 Mo., 167; Blake v. R. R., 39 N. H., 435; Arnold v. Pawtucket, 41 Atlantic Reporter, 576; Leavenworth v. Platte Co., 42 Mo., 174; State v. Newark, 4 Dutcher, 491; Hugg v. Camden, 39 N. J. Law, 620; Sifford v. Morrison, 53 Md., 14.)

But do these words entitle a temporary employee to recover the sums covering such accrued but unused leaves?

If we shall hold that the Public Printer could at will refuse the leave of absence in kind as well as the pay for the allowed but unused leaves, then employees serving fractional parts of a year would at the will of the Public Printer be deprived of both the leave and the pay. But this was not intended. It was the purpose, if language means anything, for fractional time workers to have the pro rata leave with the pay for the time of such leave as the employee might be entitled to have. We must presume the Congress meant what is said. That is, it was meant that a per cent should be added to the rate of pay in diminishing the work but continuing the pay as if the work was not curtailed.

It is true this legislation is not in line with the original purpose for which leaves of absence were granted. That purpose was well shown to be in Harrison's case to restrict work but not to increase compensation. Anomalous and inexpedient as it may seem to be to abandon the policy of the law pertaining to leaves, the underlying reason of which has always been to afford rest and recreation to steady workers, we think it has been done by the innovation that directs the leave in kind to those serving fractional parts of a year with pro rata pay for the limited term of service.

Where, then, a leave has not been granted in the case of a temporary employee detained because of the exigencies of the public printing service or discharged without fault on his part because his services are not needed, the payment of a money equivalent for the unused pro rata leave is conferred by the statute. If the temporary employee is entitled to leave with pay for that pro rata period of recreation, it follows that he should have pay for the leave denied to him.

A rule that those serving fractional parts of a year may withdraw at pleasure and yet claim an equivalent in pay might defeat the purpose of the law, or at least, in times of emergency, embarrass the operations of an office peculiarly dependent for its efficiency upon proper rules and regulations which the law authorizes its head to prescribe. Leave of absence ordinarily implies a return to official duty, and a discharge for cause or withdrawal at the pleasure of the employee may not impose the same consequences as in those cases where the employee is without fault. But whether a temporary employee can at his own pleasure sever his connection with the Public Printing Office and then claim a pro rata leave with pay, and whether such an employee practically severs that connection by misconduct so that his discharge therefor results from his own acts at a time when his service is needed and yet claim the pro rata leave with pay, are questions not in this case, and are therefore not decided.

If the question of whether plaintiff was discharged because of his fault is material to the decision of the issue involved, the burden of that proof rests upon the defendants, and plaintiff is not bound to show that he was discharged through no fault of his own. Judgment will therefore be entered for plaintiff in the sum of $175.20.

8 V.—*Judgment of the court.*

ARTHUR B. BARRINGER, vs. THE UNITED STATES. } No. 21940.

At a Court of Claims held in the city of Washington on the second day of December, 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Arthur B. Barringer, do have and recover of and from the United States the sum of one hundred and seventy-five dollars and twenty cents ($175\frac{20}{100}$).

BY THE COURT.

9 VI.—*Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause, on the second day of December, 1901, in favor of the claimant, the defendants, by their Attorney-General, on the 4th day of February, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Asst. Attorney-General.

Filed February 4, 1902.

At a Court of Claims held February 17, 1902, it was ordered—

That the application of the defendants for allowance of appeal be allowed as prayed for.

BY THE COURT.

10 Court of Claims.

ARTHUR B. BARRINGER vs. UNITED STATES. } No. 21940.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact filed by the court, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 20th day of February, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 18419, Court of Claims. Term No. 566. The United States, appellant, *vs.* Arthur B. Barringer. Filed February 24, 1902.

252

No. 566.

Motion to advance.

Filed Mar. 10, 1902.

Office Supreme Court U.S.
FILED
MAR 10 1902
JAMES H. MCKENNEY,
Clerk.

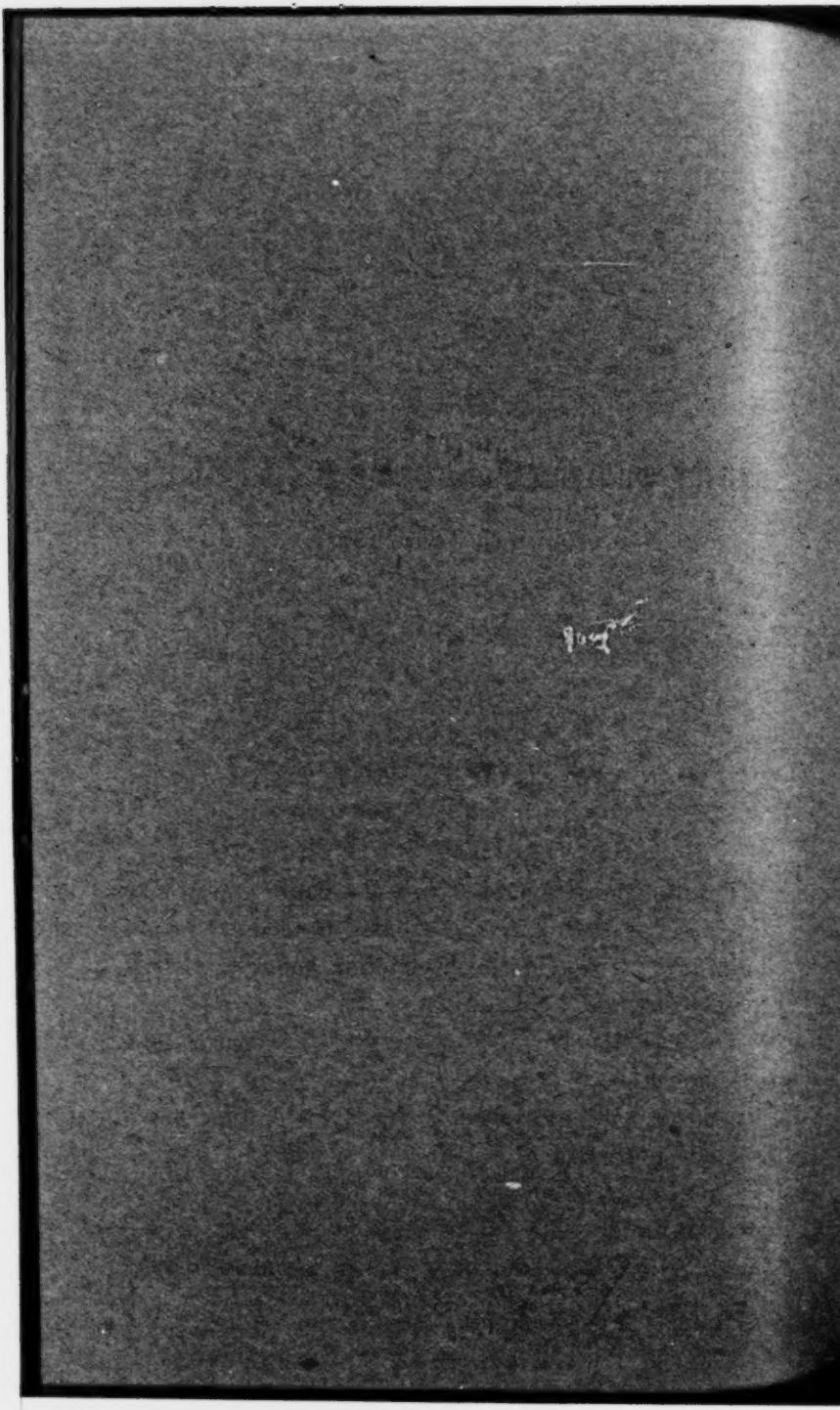
In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANTS,
v.
ARTHUR B. BARRINGER. } No. 566.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANTS,
v.
ARTHUR B. BARRINGER. } No. 566.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO ADVANCE.

The Solicitor-General moves the court to advance this case so that it may be heard early in the next term, and in support of this motion suggests the following grounds:

This case involves the question of the right of the temporary employees of the Government Printing Office to a leave of absence, or to commutation for the same, if not taken.

There are probably 300 employees in the Government Printing Office interested in the decision of this question, and besides the number of persons directly

interested, a decision will to some extent affect the current administration of the Government Printing Office. For these reasons it is thought that a speedy hearing and decision of the cause is desirable.

Counsel for the appellee concur in this motion.

JOHN K. RICHARDS,

Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
ARTHUR B. BARRINGER. } No. 252.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO ADVANCE.

The Solicitor-General moves the court to advance this case so that it may be heard early in the present term, and in support of this motion suggests the following grounds:

A similar motion was submitted to the court on the 10th of March, 1902, the grounds thereof being stated as follows:

> This case involves the question of the right of the temporary employees of the Government Printing Office to a leave of absence or to commutation for the same if not taken.
>
> There are probably 300 employees in the Government Printing Office interested in the decision of this question, and, besides the number of persons directly interested, a decision

will to some extent affect the current administration of the Government Printing Office. For these reasons it is thought that a speedy hearing and decision of the cause is desirable.

Counsel for the appellee concur in this motion.

On the 17th of March this motion was "denied without prejudice."

The motion is now renewed upon the same grounds as those suggested in the original motion, as it is thought that the manner in which it was denied may indicate that the court may be willing to entertain such a motion at this, the succeeding term.

J. K. RICHARDS,

Solicitor-General.

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FILE COPY.

Office Supreme Court U.S.
FILED
DEC 26 1902
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT;
v.
ARTHUR B. RAGGIO. } No. 252.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

LOUIS A. FRANK,
Assistant Attorney-General.

GEO. M. ANDERSON,
Special Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
ARTHUR B. BARRINGER. } No. 252.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This suit was brought in the Court of Claims by a temporary employee of the Government Printing Office for a money equivalent for unused and accumulated *pro rata* leaves of absence, and is one of a class of cases affecting many hundreds of employees of the Government Printing Office, if not all Government employees, who have been granted leaves of absence by act of Congress.

The claimant, Arthur B. Barringer, was employed as a compositor in the Government Printing Office during the following different periods:

December 31, 1895, to February 26, 1896, inclusive;
July 2, 1897, to July 31, 1897, inclusive;

December 10, 1897, to July 16, 1898, inclusive;

October 24, 1898, to March 4, 1899, inclusive;

October 28, 1899, to April 27, 1900, inclusive,

aggregating one (1) year eight (8) months and twelve (12) days.

During his terms of service he was paid at the rate of $3.20 a day for the time served prior to July 1, 1899, amounting to one year two months and twelve days, and at the rate of $4 a day for such service rendered after July 1, 1899, amounting to six months.

He was not, during any of the periods of his employment, allowed a leave of absence, nor did he make application for the same or for a money equivalent therefor. (Finding IV.)

If allowed leave of absence, thirty days a year, he would have received fifty-one days' leave.

If, instead of receiving such leave, he had been paid a money equivalent for the same, he would have received $3.20 a day for thirty-six days, and $4 a day for fifteen days, amounting to $175.20.

The Court of Claims rendered judgment in favor of the claimant for $175.

ASSIGNMENT OF ERRORS.

The court erred:

First. The provisions of the acts of January 12, 1895 (ch. 23, 2 Supp. R. S., 344), and June 11, 1896 (ch. 320, par. 10, 2 Supp. R. S., 526), granting *pro rata* leaves of absence with pay to employees of the Government Printing Office serving for fractional parts of a year, being mandatory (opinion of the court, p.

5, record), the court erred in not holding that it had no jurisdiction in the case, and that the appropriate remedy for the claimant to have pursued would have been the *writ of mandamus*, directed to the Public Printer.

Second. The claimant having failed to apply at any time during his several terms of service for a leave of absence or for a money equivalent for the same (Finding IV), and having entered into a settlement with the defendants, and having received, without protest or complaint, payment in full of all demands from said defendants (Finding II), the court erred in not holding that the said claim had been fully paid and satisfied.

Third. The court erred in its judgment that the claimant, a temporary employee of the Government Printing Office, serving for fractional parts of a series of years, set forth in Finding I, is entitled to recover against the defendants the sum of $175 as a money equivalent for unused *pro rata* leaves of absence accumulated during the several different periods of his said employment.

Fourth. The court erred in not dismissing the claimant's petition.

ARGUMENT.

JURISDICTION—MANDAMUS APPROPRIATE REMEDY.

The proviso of the act of January 12, 1895 (sec. 23, 2d Supp., 344), "That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year," and the proviso of the act of June 11, 1896 (ch. 320, par. 10, 2d Supp. R. S., 526), "That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year," are construed together by the

court below as meaning that temporary employees of the Government Printing Office, serving for fractional parts of a year, are entitled to *pro rata* leaves of absence, in kind, with pay, and that the provisions are mandatory in their character. (Record, p. 5.)

> In saying, "That it shall be lawful to allow pay for *pro rata* leave," the new statute imposed the general obligation on the Public Printer to allow the *pro rata* leave of absence, with pay, in kind, on those serving fractional parts of a year. Though this statute is only permissive in terms, the authority must be construed to be a duty in general. The words "it shall be lawful" are mandatory. (*Mason* v. *Fearson*, 9 How., 248; *Supervisors* v. *United States*, 4 Wall., 435; *Mayor of New York* v. *Furze*, 3 Hill, 614; *Bell* v. *Caldwell*, 107 Pa. St., 48; *Stines* v. *Franklin Co.*, 48 Mo., 167; *Blak* v. *R. R.*, 39 N. H., 435; *Arnold* v. *Pawtucket*, 41 Atlantic Reporter, 576; *Leavenworth* v. *Platte Co.*, 42 Mo., 174; *State* v. *Newark*, 4 Dutcher, 491; *Hugg* v. *Camden*, 39 N. J. Law, 620; *Safford* v. *Morrison*, 53 Md., 14.) Record, p. 5. (Opinion of the court.)

The law governing the issuance of the writ of mandamus in this class of cases is very clear. Where a discretion as to the performance of the duty is vested in the public official, the writ will not be issued; where the duty is ministerial (mandatory), the writ will be issued.

The Supreme Court, in the *United States ex rel. Dunlap* v. *Black*, said:

> The amenability of an executive officer to the writ of mandamus to compel him to perform a

duty required of him by law was discussed by Chief Justice Marshall in his great opinion in the case of *Marbury* v. *Madison* (1 Cranch, 137), and the radical distinction was there pointed out between acts performed by such officers in the exercise of their executive functions, which the Chief Justice calls political acts, and those of a mere ministerial character; and the rule was distinctly laid down that the writ will not be issued in the former class of cases, but will be issued in the latter.

* * * * *

The principle of law deducible from these two cases [*Kendall* v. *United States on the Relation of Stokes*, 12 Peters, 524., and *Decatur* v. *Paulding*, 14 Pet., 497] is not difficult to enounce. The court will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law, the court having no appellate power for that purpose; but when they refuse to act in a case at all, or when, by special statute or otherwise, a mere ministerial duty is imposed upon them—that is, a service which they are bound to perform without further question—then, if they refuse, a mandamus may be issued to compel them. (128 U. S., pp. 44 and 48.)

The Public Printer, in the case at bar, did not act at all, so far as allowing the claimant a leave of absence is concerned, and the court below find that the claimant did not actually apply for a leave or a

money equivalent for the same, but the court did hold that the Public Printer's duty was ministerial.

In the case of the *United States* v. *McLean*, at page 753, the Supreme Court held that—

> If the executive officer failed to do his duty, he might have been constrained by a *mandamus*. But courts can not perform executive duties, or treat them as performed, when they have been neglected. They can not enforce rights which are dependent for their existence upon a prior performance by an executive officer of certain duties he has failed to perform. The right asserted by the claimant rests upon a condition unfulfilled. The judgment was therefore erroneous and must be reversed, and the record remitted to the Court of Claims, with instructions to dismiss the petition; and it is so ordered. (95 U.S. 753)

In the case at bar the claimant contends that the duty neglected by the Public Printer was his failure to allow *pro rata* leaves of absence in kind, or their money equivalent to him during the several terms of his employment, set forth in Finding I, whereas had he performed that duty, it must necessarily have been upon his own motion, as the claimant made no application for either a leave or its money equivalent. It is extremely doubtful whether there is any obligation resting upon the Public Printer to allow a leave of absence before an application has been made for the same. The court therefore is called upon to perform a duty where there is a condition precedent unperformed by the claimant, which had he performed would have

left another condition to be performed by the Public Printer.

While the language itself of the provisions of the acts granting *pro rata* leaves of absence to temporary employees of the Government Printing Office is, by weight of authorities, considered mandatory and imperative, yet there is another provision of the act of June 11, 1896, general in character, which declares that leaves of absence shall only be allowed "under such regulations and at such times as the Public Printer may designate."

The words "under such regulations" would appear to indicate that a certain amount of discretion is vested by the act in the Public Printer, as he may by "regulations" impose certain conditions upon employees, which must be performed before making application for leaves of absence.

The Court of Claims in the *Harrison case* (26 C. Cls. R., at pages 270 and 271) said:

> He is authorized to administer it by "regulations," and may prescribe general rules which would practically exclude individual applications. He may make the leave of absence dependent upon good conduct, and in the exigency of pressing work, when other employees could not be procured, he would be justified in refusing it altogether.

At any rate, the courts can not "enforce rights which are dependent for their existence upon a prior performance by an executive officer of certain duties which he failed to perform."

ACCORD AND SATISFACTION.

The claimant in his petition alleges that—

> He has made application to the Public Printer and the Auditor for the State and Other Departments, respectively, for *pro rata* payment for his unused leaves of absence, but both have declined to allow him the same, the former on the ground that temporary employees have never been allowed leaves of absence, and the latter on the ground that he had no records in the office throwing light on the claim. (Record, p. 1.)

The Court of Claims evidently did not consider this allegation in the petition substantiated by the evidence, for while the court has not touched upon this feature of the case in its opinion, it has, in its Finding IV, flatly contradicted the material statement of the petition.

> The claimant did not, at any time during his several terms of service, set forth in Finding I, apply for a leave of absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence, persons temporarily employed were not granted leave. (Finding IV, record, p. 3.)

The court find that the claimant was paid for his services during the several terms of his employment (Finding II), and it is evident that he received his pay without protest or complaint, as he made no claim for extra pay until all connection between himself and the Government Printing Office had been severed; therefore, the defendants had every reason to believe that

he was perfectly satisfied with the settlement of his accounts.

In the *Garlinger case* the Supreme Court said:

> It is not found that the claimant himself ever demanded, during the period of his service, the compensation he now seeks. What he complained of was that, after he had performed an all-night service, he was not excused from duty the following night. He was not employed for any specific period, and was at liberty to quit the service if he thought the duties too onerous. He, however, elected to remain during the period above mentioned, and to receive the compensation awarded him by the collector without any protest as to its insufficiency. It may be fairly presumed that the collector, in paying, and the claimant, in accepting, the money paid, supposed that the payments were in full. Such a course of conduct, we think, brings this claimant within the principle of well-settled cases, that the receipt of payment, purporting to be in full, where there is no fraud or coercion, can not afterwards be repudiated as insufficient. *Baker* v. *Nachtrieb*, 19 How., 126; *United States* v. *Child*, 12 Wall., 232; *De Arnaud* v. *United States*, 151 U. S., 483. (*Garlinger* v. *United States*, U. S. R., vol. 169, p. 322.)

This case, in the feature of its discussion in the foregoing paragraph, is very similar to the case at bar, because in the latter case the claimant neither requested a leave of absence nor a money equivalent in lieu thereof, but received his pay as a full settlement for his services.

GROWTH OF LEGISLATION IN RELATION TO LEAVES OF ABSENCE FROM THE GOVERNMENT PRINTING OFFICE.

In order to arrive at a proper understanding of the statutes enacted by Congress in relation to leaves of absence from the Government Printing Office, all of the acts on that subject, or so much thereof as may be necessary, will be quoted in their chronological order for the purpose of comparison.

Prior to the 1st day of July, 1886, leaves of absence were not enjoyed by any of the employees of the Government Printing Office. By the act of June 30, 1886, chapter 572, 1 Supp. R. S., 499, entitled "An act granting leave of absence to employees in the Government Printing Office," it is provided:

> That the employees of the Government Printing Office, whether employed by the piece or otherwise, will be allowed a leave of absence, with pay, not exceeding fifteen days in any one fiscal year, after the service of one year and under such regulations and at such time as the Public Printer may designate. Such employees as are engaged on piecework shall receive the same rate of pay for the said fifteen days' leave as will be paid the day hands:
>
> *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment.
>
> SEC. 2. That this act shall take effect on and after the first day of July, 1886.

The act of August 1, 1888 (ch. 722, 1 Supp. R. S., 600), entitled "An act to extend the leave of absence

of employees in the Government Printing Office to thirty days per annum," provides:

> That the act entitled "An act granting leave of absence to employees in the Government Printing Office," approved June 30, 1886, be so amended as to extend the annual leave of absence therein described to thirty days in each fiscal year: *Provided*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year.

The act of June 19, 1894 (2 Supp. R. S., 193), provides:

> Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year.

The act of January 12, 1895 (ch. 23, 2 Supp. R. S., 344), provides:

> The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate, at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year.

Such employees as are engaged on piece-word shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands:

Provided, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment:

And provided further, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year.

The act of March 2, 1895 (ch. 187, par. 3, 2 Supp. R. S., 427), provides:

Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriations for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employee in that fiscal year on account of service rendered the previous fiscal year.

The act of June 11, 1896 (ch. 320, par. 10, 2 Supp. R. S., 526), provides:

The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year, under such regulations and at such times as the Public Printer may designate, at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed

to accumulate from year to year. Such employees as are engaged on piecework shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment: *And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may thereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office, for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence.

The general deficiency appropriation act of July 19, 1897 (30 Stat. L., 134), provides—

> That the Public Printer be, and he is hereby, authorized and directed to pay the employees and former employees and the legal representatives of deceased former employees of the Government Printing Office such sums as may be due said employees and former employees for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive; and the sum of $57,859.60, or so much thereof as may be necessary, is hereby appropriated for the purpose.

CONSTRUCTION OF THE ACTS RELATING TO LEAVES OF ABSENCE FROM THE GOVERNMENT PRINTING OFFICE.

In order to construe the foregoing statutes intelligently, to compare them, and to discover their true meaning, it is proper to consider a few of the well-established rules of construction:

> Subsequent legislation repeals previous inconsistent legislation, whether it expressly declares its repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions can not stand together. This intention to repeal, however, will not be presumed, nor the effect of the repeal admitted, unless the inconsistency is unavoidable and only to the extent of repugnance. Implied repeals are not favored. One statute is not repugnant to another unless they relate to the same subject and are enacted for the same purpose. Where there is a difference in the whole purview of two statutes apparently re-

lating to the same subject, the former is not repealed. (Sutherland on Statutory Construction, sec. 138, p. 180.)

But a fundamental principle underlying these rules is that an intelligent purpose shall be ascribed to the law making power—an intention to accomplish something by the enactment. Before the judiciary undertakes to discover what the legislature intended to do, it must concede that the legislative will intended to do something. (*Converse* v. *United States*, 26 C. Cls. R., 6, 10.)

It is evident from the foregoing statutes that if an employee of the Government Printing Office, whether a regular employee or one employed for a fractional part of a year, desired to obtain a leave in kind and had been refused, his one remedy would have been a *writ of mandamus*. Now, let us endeavor to ascertain what the "intelligent purpose" was that Congress had in mind when it enacted the various statutes granting leaves of absence to the employees of the Government Printing Office. It was not until June 30, 1886, that any of the employees of the Government Printing Office were granted leaves of absence, and even then only the regular employees were granted a leave, not exceeding fifteen days, with pay. The act of August 1, 1888, granted regular employees an increase of fifteen days, making a leave of thirty days in each fiscal year, and also for the first time granted to the temporary employees, or those serving a fractional part of a year, a *pro rata* leave. On June 19, 1894,

Congress authorized the Public Printer to pay *pro rata* leaves of absence to the regular employees of the Government Printing Office in any fiscal year notwithstanding the fact that *such employees* had already received thirty days' leave of absence with pay on account of services rendered in a *previous* fiscal year. This provision was enacted in exactly the same language in the act of March 2, 1895.

In the act of January 12, 1895, Congress, after providing for a leave of thirty days in each fiscal year for the regular employees of the Government Printing Office, with pay, also provided that such leaves of absence shall not be allowed to accumulate from year to year, and also reenacted that portion of the act of August 1, 1888, which provides that it shall be lawful to allow *pro rata* leave to those serving fractional part of a year. From the language of these different acts taken in its ordinary sense it is very evident that while Congress intended to allow *pro rata* leaves of absence in kind, with pay to those serving for fractional parts of a year, it is very evident that it also intended that no pay should be allowed to them for unused and accumulated leaves.

In the act of June 11, 1896, Congress, after providing that leaves of absence shall not be allowed *to accumulate from year to year*, also provides, among other things, that it shall be lawful to pay for *pro rata* leaves to those serving a fractional part of a year; also to allow pay for *pro rata* leaves of absence to employees of the Government Printing Office in any fiscal year,

notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of services rendered in a previous fiscal year. It is evident that this is the first act by which Congress intended to allow payment to those employees serving for a fractional part of a year during their *pro rata* leaves, because if the act of 1894 was intended to operate for the benefit of those employees serving for a fractional part of a year, as well as for the regular employees of the Government Printing Office, it would only have been necessary to have provided in the act of 1896 for the allowance of pay for *pro rata* leaves of absence of employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence with pay may have been granted to any employee during that fiscal year on account of services rendered in a previous fiscal year, because the proviso allowing pay for *pro rata* leave to those serving fractional parts of a year would have been unnecessary and superfluous. So, from the wording of the act of 1896, it is very clear that Congress only intended by the act of 1894 to provide for the payment of regular employees. A repetition in the act of January 12, 1895, of the provisions of the act of 1888, in regard to those serving a fractional part of a year, is very significant, for if it had been intended by Congress that pay should be allowed them for the leaves so granted it would have said so there and then; but it did not say so, therefore it is to be presumed that Congress intended

that they should have no pay for such leaves. This provision, contained in the acts of August 1, 1888, and January 12, 1895, is not repugnant to, or inconsistent with, the provision contained in the act of June 11, 1896, which provides that it shall be lawful to allow pay for *pro rata* leaves to those serving a fractional part of a year, and as implied repeals are not favored, it is clear that the proper course to follow is to construe these two provisions together, by doing which a very natural, just, and sensible result would be obtained, to wit, that it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year, with *pro rata* pay for said leave. If this construction is correct, an employee serving for a fractional part of a year has no better right to double pay for an unused leave of absence than a regular employee of the Government Printing Office, because all that he is entitled to is a *pro rata* leave with pay, and all that a regular employee of the Government Printing Office is entitled to is a leave of thirty days with pay, or, if he should sever his connection with the Government Printing Office, *pro rata* leave with *pro rata* pay for the year in which he so severed his connection with that office.

The Court of Claims in *Harrison* v. *United States* (26 C. Cls. R., 268) has said:

> Statutes which in plain terms declare that eight hours shall constitute the limit of a day's work and $3.20 shall constitute the maximum of a day's pay can not be forced by construction to mean that the Public Printer, by the simple expedient of withholding leaves of absence,

> can raise wages to $6.40 a day for thirty days in the year, or for twelve months' work can give a man thirteen months pay. The court, therefore, should look for some other purpose than giving gratuities for raising wages as the purpose of Congress in the enactment of these laws.

If this were true an employee serving a fractional part of a year would have an advantage not only over the regular employees of the Government Printing Office, but also over the employees of every other office and department under the United States Government; and the legislation which gave that advantage would be class legislation of the very worst character, unjust in principle and vicious in practice, and especially forbidden by the Constitution of the United States. It can not for an instant be presumed that Congress intended to do anything of the kind, and such a result could only be arrived at by extremely strained and unnatural interpretations and constructions of the statutes which have been quoted in this brief. The reason why Congress in the general deficiency appropriation act of July 18, 1897, directed payment to employees and former employees and the legal representatives of deceased former employees of the Government Printing Office for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive, was because during those years no provision was made for the payment of leaves of absence of employees serving fractional parts of a year, and Congress probably considered it an injustice to allow leaves of

absence without pay; therefore it enacted this provision, and in order to avoid class legislation, it included all of the employees of the Government Printing Office. But that there is any reason for Congress to now pass such an act is absurd, because the employees serving fractional parts of a year stand on exactly the same footing, in regard to leaves of absence, that all other employees of the Government service do, and that Congress would desire to favor this class of employees above all others is improbable. The fact that Congress did insert this provision in the general deficiency appropriation of 1897 is no better argument for the employees serving a fractional part of a year than it is for the permanent and regular employees to receive double pay for leaves of absence that have not been granted them, and the provision of this act certainly affords no ground for the claimant's contention, that Congress intended to reverse the decision of the Court of Claims in the Harrison case, or that it intended to legislate for the future as well as the past. It has specified certain years in the past, but it has neither directly nor indirectly intimated that this action was intended to have any effect, whatever, for the future, and it is unreasonable to suppose that Congress intended to vest in the Public Printer authority to double the pay, for thirty days, of the regular employees of the Government Printing Office, and to double the pay for the time occupied by the *pro rata* leaves to those serving fractional parts of a year by the simple process of refusing to said regular employees, and to those serving fractional parts of a year, leaves of absence to which

they were entitled. That is exactly what it would amount to if the claimant is correct in the position that he has taken.

The Court of Claims, in placing its construction upon the act of June 11, 1896, in its opinion, uses this language:

> In saying "that it shall be lawful to allow pay for *pro rata* leave" the new statute imposed the general obligation on the Public Printer to allow the *pro rata* leave of absence with pay in kind to those serving fractional parts of a year. Though this statute is only permissive in terms, the authority must be construed to be a duty in general. The words "it shall be lawful" are mandatory.

The only leaves of absence that the employees of any of the Departments have been entitled to, heretofore, have been leaves in *kind*, and if for any reason they failed to receive them the matter ended right there, unless, indeed, Congress came to their aid and passed an act granting payment as a gratuity. The only remedy that employees of any of the Departments possessed was the writ of mandamus, and as the opinion of the court places the employees serving for fractional parts of a year, in the Government Printing Office, on the same footing as regular employees in all of the Departments, it follows that their remedy was also a writ of mandamus. The principal if not the only reason given by the court for its decision is found in the following quotation from its opinion:

> If we shall hold that the Public Printer could at will refuse the leave of absence in kind as

> well as the pay for the allowed but unused leaves, then employees serving fractional parts of a year would at the will of the Public Printer be deprived of both the leave and the pay.

The Court of Claims appears to consider the condition of employees in the Government Printing Office, in regard to leaves of absence, anomalous, and that they are subjected to hardships in that office which are unknown to the employees of any other office or department under the Government. That it is clearly in error in this regard is shown by reference to some of the acts passed by Congress regulating leaves of absence in other branches of the Government service.

The attention of the court is called to chapter 373, paragraph 4, 2d Supp. R. S., p. 509, passed June 8, 1896, three days before the act regulating leaves of absence in the Government Printing office was enacted, which reads:

> That the compositors and pressmen employed in the awards division of the Bureau of Engraving and Printing shall be allowed leave of absence with pay, not exceeding thirty days in any one year, or a *pro rata* portion thereof for a less time than one year, under such regulations and at such time or times as the chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate, and in conformity with the act approved July 6, 1892, granting leaves of absence with pay to the employees of the Bureau of Engraving and Printing.

The provision of the act approved July 6, 1892, incorporated in the above paragraph, says (chap. 154, 27 Stat. L., p. 87):

> That the employees of the Bureau of Engraving and Printing, including the pieceworkers, shall be allowed leave of absence with pay, not exceeding thirty days in any one year, under such regulations and at such time or times as the chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate: *Provided*, That the length of the leave of absence of any employee of said Bureau doing piecework, and the pay during such leave of absence, shall be determined by the average amount of work done by such person and the pay therefor during the several months of the year.

The court will probably take notice that a very large force is employed in the Bureau of Engraving and Printing and that the restrictions imposed in the above-quoted acts in regard to the conditions under which leaves of absence may be granted to employees are more severe than those imposed in the acts regulating the granting of leaves of absence in the Government Printing Office, because in the Bureau of Engraving and Printing they are granted under such regulations and at such time or times as the chief of the Bureau with the approval of the Secretary of the Treasury may prescribe and designate, and the leaves of those engaged upon piecework and their pay during such leaves of absence are dependent upon the

average amount of work of each employee and the pay therefor during the several months of the year.

The leaves of employees of the District government are regulated by the following provision (chap. 176, par. 1 (2), 2 Supp. Rev. Stat., 411), passed 1895:

> *Provided*, That the Commissioners of the District of Columbia are authorized hereafter, *in their discretion*, to grant leave of absence, not to exceed thirty days to any individual in any fiscal year, to regular employees, not to exceed thirty days annually, appointed directly by the Commissioners and paid out of general appropriation and whose service is continuous, but who receive per diem compensation.

The above provision renders leaves of absence *entirely discretionary* with the Commissioners of the District of Columbia, and if they should think proper it would not be compulsory upon them to grant any leave at all to employees of that branch of the government.

By the act passed in 1896, chap. 419, par. 8 (7), 2 Supp. R. S., 523, the leaves of absence of the police force of the District of Columbia is regulated in the following manner:

> Each of the members of the Metropolitan police shall be entitled to twenty days' leave of absence each year with pay, the time of leave in each instance to be determined by the District Commissioners.

And the provision regulating the leaves of absence of members of the fire department was passed the same year in exactly the same language.

The following year, 1897, chap. 387, par. 6, 2 Supp. R. S., 601, was enacted:

> Hereafter each of the members of the Metropolitan police shall be entitled to leave of absence each year with pay for such time, not exceeding twenty days, as the Commissioners shall determine.
>
> Paragraph 7. Hereafter each of the members of the fire department shall be entitled to leave of absence each year, with pay, for such time, not exceeding twenty days, as the Commissioners shall determine.

The act of 1896 granted to policemen and firemen twenty days' leave of absence with pay in each year, and left only the time to be determined by the Commissioners.

The act of 1897 granted them leaves of absence not exceeding twenty days, as shall be determined by the Commissioners, thereby placing it in the power of the Commissioners to cut down their leaves to one day if they should see fit.

Paragraph 7 of chapter 387 of the act of 1897, above quoted, enacts precisely the same provision in regard to granting leaves of absence to members of the fire department.

Comparison of the legislation of 1896 and 1897 in regard to the police force and fire departments indicates that the tendency of legislation is to place greater discretion in the hands of those granting leaves of absence than was formerly possessed by them.

Chapter 190, approved February 1, 1901 (31 Stat.

L., 746), relating to the leaves of absence of employees of the navy-yards, etc., reads as follows:

> That each and every employee of the navy-yards, gun factories, naval stations, and arsenals of the United States Government be, and is hereby, granted fifteen working days' leave of absence each year, without forfeiture of pay during such leave: *Provided*, That it shall be lawful to allow pro rata leave only to those serving twelve months or more: *And provided further*, That in all cases the heads of divisions shall have discretion as to the time when the leave can best be allowed without detriment to the service, and that absence on account of sickness shall be deducted from the leave thereby granted.

In the above act employees of the navy-yards, etc., are only granted leaves of absence after service of twelve months or more, and the time of said leaves is left tc the discretion of the heads of divisions, and absence on sick leave is deducted from their leaves of absence—a hardship not shared by employees of the Government Printing Office.

The leaves of absence of officials of the Weather Bureau of the city of Washington are taken care of by chapter 85, passed in 1898 (30 Stat. L., 340):

> Thirty local forecast officials, section directors, observers, operators, repair men, messengers, laborers, and other necessary employees, outside of the city of Washington, who, without additional expense to the Government, may hereafter, in the discretion of the Secretary of

Agriculture, be granted such leaves of absence as are now authorized to employees in the office of the Chief of the Weather Bureau, not to exceed thirty days in any one year.

Certainly the lot of these weather officials in regard to their leaves of absence is not an enviable one, even compared with that of the employees of the Government Printing Office. This act is two years later than the act granting *pro rata* pay for leaves to employees of the Government Printing Office.

Chapter 555 of the act of 1901 (31 Stat. L., 202) provides for the employees of the Bureau of Animal Industry, outside of the city of Washington, and reads as follows:

Salaries and expenses, Bureau of Animal Industry, and the employees of the Bureau of Animal Industry outside of the city of Washington, may hereafter, in the discretion of the Secretary of Agriculture, be granted leaves of absence not to exceed fifteen days in any one year.

This is one of the latest acts passed regulating leaves of absence of the employees of the Government and grants employees therein named only fifteen days leave in any one year, in the discretion of the Secretary of Agriculture, and says nothing whatever about their pay during said leave.

Chapter 466 of the act of February 23, 1901, section 3 (R. S., 2 Supp., p. 1489), provides for leaves of absence of employes of the Census printing office.

SEC. 3. That mechanics and other persons employed in the Census printing office, whether

> employed by the piece or otherwise, shall be allowed annual leave of absence and sick leave with pay, under the same terms as now or hereafter may be prescribed in the Government Printing Office. * * *
>
> *Provided*, That the Director of Census may designate the time when annual leave shall be taken.

It will be noticed in the above act that while the regular employees of the Census printing office are granted annual leaves of absence, no provision whatever has been made for *pro rata* leaves to employees serving for less than a year at a time. The fact that the leaves of regular employees of the Census printing office are allowed under the terms prescribed for leaves from the Government Printing Office would appear to indicate that the duties and responsibilities of employees of both offices are similar.

Provisions of acts relating to the leaves of absence of the above-mentioned employees of the Government are selected because the employees therein provided for are engaged in the performance of arduous and exacting duties, and in two of the classes so selected, policemen and firemen, oftentimes dangerous duties.

The judgment in the case at bar is a precedent that extends far beyond the limits of the Government Printing Office, and embraces every department of the Government where leaves of absence are granted under such regulations and at such times as the officials authorized to allow them may designate, and is far more sweeping than at a first glance it would appear to be.

The act of July, 1886, provided for leaves of absence to the employees of the Government Printing Office for a period not exceeding fifteen days in any one fiscal year, after service of one year, under such regulations and at such time as the Public Printer may designate.

The act of June 11, 1896, provided for leaves of absence to the employees of the Government Printing Office not to exceed thirty days in any one fiscal year, under such regulations and at such times as the Public Printer may designate. It will be observed, therefore, that the act of 1896 does not require the services of one year before a leave of absence may be granted, which clearly demonstrates that the act of 1896 was intended to cover the case of employees serving for fractional parts of a year.

The act of 1896 goes on to say: "But such leaves of absence shall not be allowed to accumulate from year to year."

The prohibition of the statute was evidently intended to apply to those employees serving for a fractional part of a year, as well as for those serving for more than a year at a time, or, in other words, to regular employees.

The act of June 19, 1894, permitted the leaves of regular employees to accumulate to the extent of two years, and this provision was also incorporated in the act of June 11, 1896, but nowhere are the leaves of those serving for fractional parts of a year permitted to accumulate at all. Leaves not being allowed *to accumulate*, how can an employee of the Government Print-

ing Office serving for fractional parts of a year be permitted to draw double pay for five separate and distinct leaves of absence to which he claims he was entitled and which he did not receive?

It is true, further on in the act of 1896, the following language is used: "*And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year."

If Congress had intended that the temporary employees therein mentioned should be entitled to draw pay for their accumulated leaves of absence, it would have been easy to have made that meaning clear by using the following language: "*And provided further*, That it shall be lawful to allow pay for unused and accumulated *pro rata* leaves of absence to those serving fractional parts of a year."

It will be observed that Congress in the above provision used the word "leave" in the singular, showing clearly that it could not be intended to apply to accumulated leaves.

The fact that Congress, in the general deficiency appropriation act of July 19, 1897 (30 Stat. L., 134), provides for the payment of accrued and unpaid leaves of absence for the fiscal years from 1887 to 1894, both inclusive, is proof positive that it did not consider the employees, and former employees, of the Government Printing Office and the representatives of deceased former employees, legally entitled to such payment without a special act of Congress for their benefit.

If the above provision of the act of July 19, 1897, has any effect whatever upon this question, it is

against the contention of the claimant, that he is entitled to be paid for his unused and accumulated leaves of absence.

Section 1764 of the Revised Statutes provides:

> No allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

Section 1765 provides:

> No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The services rendered by claimant during the leaves of absence to which he was entitled, but which he did not receive, may certainly be regarded as *extra services* within the meaning of the above-quoted provisions of the Revised Statutes, and that there is no law *expressly authorizing* payment for those extra services is patent.

Section 3648, Revised Statutes, provides: "Payment shall not exceed the value of the services rendered."

The value of a day's work in the Government Printing Office, by the claimant in this case, was fixed by law, and there is no statute which provides that his services for the time during which he worked, and to

which he was entitled for a leave of absence, were worth double the money value of his services for a period of the same length of time during which he worked, and to which he was not entitled as a leave of absence. In other words, were his services more valuable to the Government for one period of time than for another, provided he was employed on the same kind of work for both periods?

The Court of Claims in its opinion (p. 6 of the record) says:

> It is true this legislation is not in line with the original purpose for which leaves of absence were granted. That purpose was well shown to be in *Harrison's case* to restrict work, but not to increase compensation. Anomalous and inexpedient as it may seen to be to abandon the policy of the law pertaining to leaves, the underlying reason of which has always been to afford rest and recreation to steady workers, we think it has been done by the innovation that directs the leave in kind to those serving fractional parts of a year with *pro rata* pay for the limited term of service.

The court here states that it is both *anomalous* and *inexpedient* to abandon what appears to have been the settled policy in regard to leaves of absence. This language is certainly very strong.

The definition of the word anomalous is, "Not conforming to rule, method, system, or analogy."

The definition of inexpedient is, "Not calculated to promote, or not considered suitable to, the particular purpose for which it was intended."

The definitions of the two words, by which the court has described what they consider the abandonment of the settled policy of the law pertaining to leaves of absence, would appear to bring the abandonment well within the doctrine of inconvenience. So that had the meaning of the provision of the statute relied upon by the court to sustain its position been more favorable to that position, the court would have been justified in applying to the said provision a meaning and intendment much more in harmony with the general tenor and spirit of the act and more in accordance with public policy.

A statute may be construed contrary to its literal meaning, when a literal construction would result in an absurdity or inconsistency and the words are susceptible to another construction which will carry out the manifest intention.

Statutes will be construed in the most beneficial way which their language will permit, to prevent absurdity, hardship, or injustice; to favor public convenience, and to oppose all prejudice to public interest. (Sutherland on Statutory Construction, p. 408, secs. 323 and 324.)

A particular construction of a statute which will occasion great inconvenience or produce inequality and injustice is to be avoided if another more reasonable interpretation is present in the statute. (*Knowlton* v. *Moore*, 178 U. S., 41.)

> All laws should be so construed as to avoid an unjust or absurd conclusion. (Chinese Laborers, 13 F., 291; Chinese Merchant, 13 F., 605.)

That it is contrary to public convenience and prejudicial to public interest to pay employees of the Government double pay for a period of time during which they have worked, and to which they were entitled as leaves of absence, is too apparent to need discussion.

An act which absolutely changes the settled and well-defined reasons for which leaves of absence are given—rest, recreation, and recuperation—for the purpose of giving double pay to a comparatively few employees, serving for fractional parts of a year, in the Government Printing Office, is a *reductio ad absurdum;* but the act of June 11, 1896, does nothing of the kind—it simply grants to temporary employees of the Government Printing Office *pro rata* leaves of absence, in kind, with pay, and allows them nothing more.

In the case of *Harrison* v. *United States*, above referred to, it was held by the Court of Claims—

> That the same result might have been legally attained by granting the claimant a leave of absence for whatever time he was entitled to and postponing the discharge until the expiration of the leave. (26 C. Cls. R., pp. 272 and 273.)

The Public Printer had no right to pay an employee for a leave of absence after his connection with the Government Printing Office had been severed, but if the Public Printer had desired to pay an employee

who was serving for a fractional part of a year in that office, and whose connection with the office was about to be severed, he might have granted him a *pro rata* leave with pay, and provided that at the expiration of said leave he should be discharged from further employment in that office, and have paid him for said *pro rata* leave at the time he actually discontinued his work in said office.

LOUIS A. PRADT,
Assistant Attorney-General.

GEO. M. ANDERSON,
Special Attorney.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
ARTHUR B. BARRINGER. } No. 252.

REPLY BRIEF FOR THE UNITED STATES.

VARIANCE BETWEEN DECISION OF THE COURT OF CLAIMS AND ARGUMENT OF COUNSEL FOR APPELLEE.

The claim in this case is rested primarily upon the second proviso of the act of June 11, 1896. This proviso the Court of Claims interpreted as conferring upon employees of the Government Printing Office, serving fractional parts of a year, the right to pay with their proportionate, or *pro rata*, leaves of absence, which right to pay in such cases, according to the court, did not exist prior to that enactment. But the argument of counsel for claimant on this appeal is at variance with this view of the court, their contention being that the right to pay with *pro rata* leave existed by virtue of the prior legislation. This is a matter of vital signification. As interpreted by the court, the words "pay for *pro rata* leave," found in the above cited proviso, supply an omission of the prior statutes of 1888 and January 12,

1895, in which no provision is made for pay, the language being simply "*Provided*, That it shall be lawful to allow pro rata leave to those serving fractional parts of a year."

Hence this proviso, as thus interpreted by the court, affords, in terms, no authority for a commutation of unused leave, and accordingly the court was obliged to rest its decision in that regard upon the hardship of denying *pro rata* leave to one serving a fractional part of a year and upon what seemed to the court the plain justice of allowing him commutation for the leave thus denied. But this is a reason not found in statutory authority, but beyond it. On the other hand, according to the contention of counsel for the claimant, the proviso in question provides for an alternative in case *pro rata* leave with pay is not allowed, that alternative being pay for unused leave. In other words, it comes to this: That the words "pay for *pro rata* leave" mean commutation of pay for unused leave, and nothing else. It seems to us that this interpretation is absolutely strained and unwarranted, whilst the interpretation given to the phrase by the court is perfectly natural and in accordance with the plain meaning of the words employed.

QUESTION OF PRECEDENT.

Counsel for claimant contend that the decision in this case furnishes no broad precedent, but relates simply to the rights of a limited class of employees in the Government Printing Office. This contention is contradicted by the interpretation which the court

gives to the second proviso of the act of 1896, above discussed. That decision, in effect, simply places those serving a fractional part of a year upon an equal footing with those regularly employed by the year, and the decision does not give to those serving a fractional part of a year the right to commutation for unused leave by reason of any peculiar or special meaning of the proviso under consideration. Accordingly, if the decision is authority for the claim of the claimant, it is equally valid authority for the payment to regular employees of the Government Printing Office for any unused portion of their annual leave, and by the same token is like authority for the commutation of unused leave to employees in every other department of the Government.

DISCRIMINATION.

Taking the counsel for claimant on their own ground, they ask that a discrimination be made in favor of a single class of employees in one of the Executive Departments; for they do not contend that there is provision for, and it is obvious that there is no statutory warrant whatever in any of the acts relating to leaves of absence of employees of the Public Printing Office for, commutation of unused annual leave of regular employees. It certainly is most extraordinary to suppose that Congress intended any such discrimination. The argument of counsel in support of this contention is that the temporary employee has no opportunity to demand his vacation during his temporary employment, and that in most cases it would be inexpedient to allow it to him during such employment.

Granting this to be so, there is no reason why the leave of such employee should not be granted to him at the end of his employment, according to the method recited in the Comptroller's decision quoted in brief for appellee.

WAIVER AND MANDAMUS.

The claimant neglected to pursue what would seem to be his obvious course, namely, to demand that his leave of absence be granted to him at the conclusion of his temporary employment, and this continued neglect on his part to thus assert his rights for a period of five successive years, meanwhile accepting without protest his pay for the time for which he was employed, would seem to amount to a distinct waiver on his part. This right to leave of absence if thus asserted by him and denied could unquestionably have been enforced by mandamus and without any attending embarrassment or hardship such as has been suggested by counsel for claimant. Indeed it would seem that nothing could have been easier than for the several hundreds of claimants interested (Transcript of record, p. 4) to have made a test case through one of their number in this way.

APPROPRIATION ACT OF 1897.

Counsel for claimant find in the act of July 19, 1897, by which payment was made to various employees of the Government Printing Office for unused leave, not only a recognition of the justice of claims of that character but of an absolute indebtedness therefor. This act was passed pursuant to the resolution of the Senate

of June 10, 1896, which called for a list of employees in the Government Printing Office of those who had failed to receive their annual leave of absence during the fiscal years 1890, 1891, 1892, 1893, and 1894, and the amount due each person for each fiscal year, separately, on account of such failure. In response to this resolution the Public Printer furnished not only the information called for but also like information for the fiscal years 1887, 1888, and 1889, and still further a list of temporary employees who had never received any *pro rata* leaves of absence with pay.

It will be seen that in the legislation upon the subject of leaves of absence for employees in the Public Printing Office during and prior to the period embraced in this resolution there had not been any attempt, even according to the contention of counsel for claimant, to provide for commutation of unused annual leaves of absence nor for unused *pro rata* leave; accordingly there could have been nothing "due" by virtue of statute to any employees of the Government Printing Office during that period. It certainly could have been due in no other way, and hence the phrase "amount due" must be taken to mean the amount of pay which they would have received if leaves of absence had been granted.

Accordingly, this appropriation act can properly be construed as nothing more than an act of grace on the part of Congress. Certainly the views of the cashier of the Government Printing Office, volunteered by him upon the subject in making out the list called for

by the Senate resolution, are not weighty matters in this connection.

POLICY OF STATUTES GRANTING LEAVE OF ABSENCE.

The policy of granting leaves of absence to Government employees is very clearly and ably set forth by Chief Justice Nott, of the Court of Claims, in the Harrison case. He especially emphasizes the fact that this policy is *not* to increase pay, but if the contention of counsel for claimant be sustained that is precisely what would result. No good reason has been offered why Congress should in 1896 desire to change the policy of all its previous enactments on the subject of leaves of absence. There seems also to be no good reason why this policy could not be carried out by granting *pro rata* leave to temporary employees at the close of such temporary employment. It is clear from the history of the service of claimant that in a sense his employment was regular, in that he was employed every year for five successive years. It is inconceivable that a skilled workman like the claimant would give up regular employment elsewhere for a temporary employment in the Government Printing Office, amounting in one year only to twenty-nine days, and accordingly it is reasonable to suppose that he was enabled to arrange to leave regular employment elsewhere in order to accept this temporary employment by the Government, and that so he was not forced after leaving the Government service each year to wander about searching for work. If, then, his vacation had been granted him at the end of his term of service,

there is no reason to suppose that he would not have taken the benefit of it and thus, since he was employed for several successive years, the policy relating to leaves of absence would have been carried out in his case. But the claimant in this case failed to make any demand for this leave of absence to which he was clearly entitled and which, according to the policy above referred to, he should have received, and the Public Printer, on his part, neglected to carry out the policy of Congress by granting the leave. But here counsel contend that there was no neglect of duty on the part of the Public Printer, but that on the other hand express provision has been made for leave not granted by him in the way of commutation. Such contention amounts to this: That at the will of the Public Printer the policy upon which leaves of absence are allowed, and should, in fact, be without exception given where provided for, may be wholly thwarted, and in lieu thereof the claimant be entitled to increased pay without any of the corresponding benefit to the Government which comes through the enjoyment of the vacation by the employee. It is plain, too, that this evasion of the purpose of Congress would in many instances be encouraged by employees who prefer double pay to a vacation with pay.

ACCUMULATION OF LEAVE.

The first portion of the act of June 11, 1896, relates to all classes of employees in the Government Printing Office, and expressly provides that leaves of absence

shall not be allowed to accumulate from year to year. We have urged this statute against the claim in this case in our prior brief. Counsel for claimant say that this prohibition does not apply to claimant's case, because he did not serve for a full year at any time, but he certainly served for five successive years, and he certainly allowed his leaves of absence to accumulate from year to year of that period. But counsel urge that, granting this, it was the fault of the Public Printer. It certainly was equally the fault of the claimant.

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Supreme Court of the United States

OCTOBER TERM, 1902.

No. 252.

THE UNITED STATES, APPELLANT,

v.

ARTHUR B. BARRINGER.

BRIEF FOR APPELLEE.

I.—STATEMENT OF THE CASE.

Question Involved.

This case raises the question of the right of employees of the Government Printing Office temporarily serving for fractional parts of a year to leaves of absence or to *pro rata* pay for unused leaves.

The claimant served between the 31st day of December, 1895, and the 27th of April, 1900, for five (5) separate periods, the shortest of which was twenty-nine (29) days and the longest seven (7) months and six (6) days. He was paid for his daily services at the rate fixed by law. He did not, however, receive any leave of absence or pay for unused leaves. Whether he is entitled to such pay is the question in this case.

Facts Found by the Court of Claims.

The facts found by the Court of Claims (Record, pp. 2, 3) are as follows:

I. The claimant, Arthur B. Barringer, was from time to time employed as a compositor in the Government Printing Office during the following periods:

December 31, 1895, to February 26, 1896, inclusive;
July 2, 1897, to July 31, 1897, inclusive;
December 10, 1897, to July 16, 1898, inclusive;
October 24, 1898, to March 4, 1899, inclusive;
October 28, 1899, to April 27, 1900, inclusive,

aggregating one (1) year eight (8) months and twelve (12) days.

II. During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months.

III. He was not during any of the times of his employment allowed leave of absence or *pro rata* pay for leave of absence. If allowed leave of absence of thirty (30) days a year he would have been entitled to fifty-one (51) days' leave.

If instead of taking such leave he had been paid *pro rata* for the same, he would have been paid three dollars and twenty cents ($3.20) a day for thirty-six (36) days and four dollars ($4) a day for fifteen (15) days, amounting to one hundred and seventy-five dollars and twenty cents ($175.20).

IV. The claimant did not at any time during his several terms of service set forth in finding I apply for a leave of

absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave.

V. All employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all accrued but unused leaves of absence. The last of the appropriations for such unused leaves was that of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60), made by the act of July 19, 1897 (30 Stat. L., 134), and was based on an estimate of the Public Printer, who in transmitting the same to the Senate informed that body that it included "many employees whose terms of service in the office were only for periods of less than one year," and that "the amounts of *pro rata* leave which accrued to such persons are herewith included in the respective years in which they were earned."

Judgment and Appeal.

The court held, in an opinion by Judge Howry (Record, pp. 3–6), that the claimant was entitled to recover *pro rata* pay for his accrued but unused leaves of absence, and gave judgment (p. 7) in his favor for one hundred and seventy-five dollars and twenty cents ($175.20), (37 C. Cls., 1).

The United States appealed (p. 7).

Rate of Compensation.

The rate of compensation in the Government Printing Office is limited by the act of February 16, 1877, chapter 58 (19 Stat. L., 231), to "forty cents per hour for time work to printers and bookbinders." By act of March 3, 1899, chap-

ter 424 (30 Stat. L., 1119), this limit was raised for the fiscal year beginning with the 1st of July following to fifty cents per hour, and by the act of June 6, 1900, chapter 791 (31 Stat. L., 643), the increase to fifty cents per hour is made permanent. By act of March 3, 1891, chapter 550 (26 Stat. L., 1084), night work is to be paid for at 20 per cent. more than day labor.

The claimant in this case received payment for his services at the rate, first, of forty cents per hour, limited by the act of 1877 (equivalent to $3.20 per day of eight hours), and afterwards of fifty cents per hour, limited by those of 1899 and 1900 (equivalent to $4 per day) (Finding II, *ante*, p. 2).

Acts Allowing Leaves of Absence—1886, 1888.

The first act allowing leaves of absence to the employees of the Government Printing Office was that of June 30, 1886. By that act, chapter 572 (24 Stat. L., 91), entitled "An act granting leave of absence to employees in the Government Printing Office," it is provided:

"That the employees of the Government Printing Office, whether employed by the piece or otherwise, be allowed a leave of absence, with pay, not exceeding fifteen days in any one fiscal year, after the service of one year and under such regulations and at such time as the Public Printer may designate. Such employees as are engaged on piece-work shall receive the same rate of pay for the said fifteen days' leave as will be paid to day hands:

"*Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment.

"SEC. 2. That this act shall take effect on and after the first day of July, 1886."

By act of August 1, 1888, chapter 722 (25 Stat. L., 352), entitled "An act to extend the leave of absence of employees in the Government Printing Office to thirty days per annum," it is provided:

"That the act entitled 'An act granting leave of absence to employees in the Government Printing Office,' approved June 30, 1886, be so amended as to extend the annual leave of absence therein described to thirty days in each fiscal year:

"*Provided*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year."

Harrison v. United States, 26 C. Cls., 259; 1891.

Under these acts of 1886 and 1888 a suit was brought in the Court of Claims by an employee of the Government Printing Office for the recovery of payment for leaves of absence to which he became entitled and which had not been allowed to him (*Harrison v. United States*, 26 C. Cls., 259).

The court held that "The purpose of the leave-of-absence laws (30th June, 1886, 24 Stat. L., 91; 1st August, 1888, 25 *id.*, 352) is to restrict work, not to increase wages" (Syllabus, paragraph 1, p. 260). Also that the Public Printer "cannot grant constructive leaves of absence to persons who have ceased to be employees, nor pay to employees a money equivalent for leaves of absence" (par. 4, p. 260).

Consequently it was held that "a payment made to a man after he has ceased to be an employee in lieu of a leave of absence which he was entitled to but did not take is unauthorized and forbidden by law" (par. 5, p. 260).

As correctly stated by the Court of Claims in its opinion in this case (p. 4), while the decision in *Harrison v. United States* is accepted by counsel for plaintiff as a correct exposition of the law at the time it was rendered—April 13, 1891—"nevertheless it is contended that subsequent legislation has made the views there announced inapplicable to a claim for unused vacation pay."

Acts Allowing Pro Rata Pay for Leaves, 1894, 1895, 1896.

On June 19, 1894, the following was enacted in "An act making appropriations to supply a deficiency in the appropriation for public printing and binding for the fiscal year 1894, and for other purposes":

"To enable the Public Printer to pay to the employees heretofore or now employed in the Government Printing Office since July first, eighteen hundred and ninety-three, such sums as may be due them for leaves of absence, notwithstanding the fact that thirty days' leave of absence, with pay, had been granted to such persons in said fiscal year on account of service rendered in the preceding fiscal year, and also to pay all employees of the said office any leave of absence which they may have failed to obtain from the lack of necessary appropriations or other cause, sixty-five thousand dollars, or so much thereof as may be necessary.

"Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year" (28 Stat. L., 94).

"An act providing for the public printing and binding and the distribution of public documents," approved January 12, 1895, contains the following:

"SEC. 23. The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year.

"Such employees as are engaged on piece-work shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands:

"*Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment:

"*And provided further*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year" (28 Stat. L., 604).

In "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1895, and for prior years, and for other purposes," approved March 2, 1895, the following was enacted:

"To enable the Public Printer to comply with the provisions of the law granting thirty days' annual leave to the employees of the Government Printing Office, fifty thousand dollars, or so much thereof as may be necessary, and the Public Printer is authorized to pay *pro rata* leave of absence to any former employees of the Government Printing Office who have during the present fiscal year resigned, died, or otherwise severed his or her connection with the office, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees during the fiscal year on account of service rendered in a previous fiscal year.

"Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year" (28 Stat. L., 868).

The following was adopted in the act of June 11, 1896, chapter 420, being "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes" (29 Stat. L., 453, 454):

"The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations

and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year.

"Such employees as are engaged on piece-work shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands:

"*Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment:

"*And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year.

"And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may hereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office, for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence."

Retroactive Allowance for Unused Leaves, 1897.

In the same Congress, on the 10th of June, 1896, on the day before the act last cited became a law, the following occurred in the Senate, as shown by the Congressional Record, Fifty-fourth Congress, 1st session, part 7, p. 6367:

"Mr. Gallinger submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Public Printer be, and he is hereby, directed to communicate to the Senate the names of all persons who were employed in the Government Printing Office

in the fiscal years (each year separately) 1890, 1891, 1892, 1893, and 1894, who failed to receive their annual leaves of absence during those fiscal years, and the amount due each person for each fiscal year separately on account of such failure."

This resolution remaining unanswered, the following action was taken by the Senate January 2, 1897, as shown by the Congressional Record, 54th Congress, 2d session, part 1, p. 485:

"Mr. Lodge submitted the following resolution, which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Public Printer be, and he is hereby, directed to send to the Senate the information called for in the resolution of June 10, 1896."

On January 13, 1897, in the Senate proceedings, as shown on page 743, volume 29, of the Congressional Record—

"The Vice-President laid before the Senate a communication from the Public Printer, transmitting, in response to a resolution of June 10, 1896, a report of Mr. James E. Teale, cashier of the Government Printing Office, relative to employees of that office who have accrued and unpaid leaves of absence; which, with the accompanying papers, was ordered to lie on the table and be printed."

The response of the Public Printer was laid before the Senate January 13, 1897, and constitutes Senate Document 59, 54th Congress, 2d session. This is the "estimate of the Public Printer," referred to and in part quoted in Finding V (Record, p. 3).

The letter of the cashier of the Government Printing Office, which constitutes the body of the response, is as follows:

"OFFICE OF THE PUBLIC PRINTER,
WASHINGTON, D. C., *January* 13, 1897.

"SIR: In submitting for your consideration the detailed information requested in the Senate resolution of June 10,

1896, I desire to state that this information has necessarily involved an incalculable amount of labor, and with the limited clerical force at my disposal the work has been prosecuted with more than reasonable diligence, care and dispatch, and, for the purpose of facilitating its early completion, much night work has been performed in the course of its preparation.

"The character of this work is such that it was essential that only those most familiar and experienced in this special line of work could be detailed in the preparation of this statistical information, and, of necessity, this work was required to be executed without any interruption to the current work of this division. The compilation of this data necessitated a careful and systematic examination of over 6,000 individual accounts, and some time has been lost in the progress of the work by reason of the absence of proper and accurate records in the matter of dates of appointments, dismissals, etc.

"The compilation of accounts contained in the accompanying statement, as taken from the records of this office, show that the number of persons having accrued and unpaid leaves of absence to their credit, together with the aggregate amount for the fiscal years of 1890, 1891, 1892, 1893, and 1894, respectively, are as follows:

Year.	Number of accounts.	Amount.
1890	95	$1,235.09
1891	399	8,980.02
1892	157	5,205.36
1893	468	14,317.10
1894	506	15,795.60
Total	1,625	$45,533.17

"I would suggest that the additional sum of $1,500 be recommended for the purpose of liquidating any additional claims that may subsequently appear to be equitable and just, but not included in the accompanying statement by reason of the absence of the necessary data to properly determine at this date the amount due in such cases.

"It will also be observed that the preparation of this detailed statement is based upon the individual leave of absence accounts of present and former employees of this office, notwithstanding the reasons why said leaves of absence were forfeited, lost, and unpaid.

"Your attention is also called to the fact that during the fiscal years of 1890 to 1893, inclusive, many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period.

"The amounts of *pro rata* leave which accrued to such persons are herewith included in the respective years in which they were earned.

"Your attention is also respectfully invited at this time to the carefully approximated estimate of $50,000, which was submitted in your letter of May 1, 1896, in reply to the Senate resolution of April 20, 1896, calling for information as to the amount necessary to liquidate these leave of absence claims. It will also appear upon a comparison between the aggregate amount as shown by the accompanying itemized statement and the estimated amount submitted May 1, 1896, that said estimate was conservative in its scope, and would have justified any anticipated legislation and averted subsequent delay by reason of the enormous amount of labor involved in the preparation of this detailed statement.

"In view of the anticipated legislation looking forward to the liquidation of the unpaid leave of absence claims of present and former employees of this office, as indicated by Senate resolutions, it would seemingly appear in the interest of justice and equity that the scope of such legislation should not be limited or confined simply to the fiscal years of 1890 to 1894, inclusive, but that its provision should also embrace such accrued and unpaid leave of absence claims which were also lost and forfeited during the fiscal years of 1887, 1888, and 1889, and to that end I would respectfully submit for your further consideration a supplemental statement, in detail covering such leaves of absences as were unpaid in the fiscal years of 1887, 1888, and 1889, respectively, as follows:

Year.	Number of accounts.	Amount.
1887	7	$207.26
1888	611	10,224.96
1889	116	1,894.21
Total	734	$12,326.43

"In pursuance of the provisions of an act of Congress approved June 30, 1886, authority was first given the Public Printer to grant leaves of absence of fifteen days with pay to the employees of the Government Printing Office who had rendered one year's continuous service in the office prior to the date when the act became a law. This beneficent legislation was subsequently amended August 1, 1888, by extending the leaves of absence to thirty days, with pay. This law, in the course of its operation, has been subjected to various interpretations and restrictions by the Treasury Department and Court of Claims, and as the result of recent legislation of Congress many objectionable features which have heretofore existed have been removed and you have therefore been enabled to administer the provisions of the law according to its original intent and purpose, and, as I have reason to believe, to the general satisfaction of its beneficiaries.

"Respectfully submitted.

"JAMES E. TEALE, *Cashier.*

"Hon. TH. E. BENEDICT,
"*Public Printer.*"

Then follows a long list of names, with the amounts due each one for each year, stated separately, from 1887 to 1894, inclusive.

The amount constituting the sum of all the amounts due for unpaid leaves of absence from the fiscal year ending June 30, 1887, to that ending June 30, 1894, aggregating fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60), was appropriated by "An act making appropriations to supply deficiencies in the appro-

priations for the fiscal year ending June 30, 1897, and for prior years, and for other purposes," approved July 19, 1897 (30 Stat. L., 134), as follows:

"That the Public Printer be, and he is hereby, authorized and directed to pay the employees and former employees and the legal representatives of deceased former employees of the Government Printing Office such sums as may be due said employees and former employees for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive; and the sum of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents, or so much thereof as may be necessary, is hereby appropriated for the purpose."

This appropriation included temporary as well as permanent employees, for the report of the Public Printer called attention (*ante*, p. 11) to the fact that "many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period."

The appropriation, therefore, having been made for the full amount of the Public Printer's estimate, it necessarily included these temporary employees.

Ruling of Comptroller, 1896.

The acts of 1894, 1895, and 1896 received a construction from the Comptroller of the Treasury by decision rendered July 22, 1896 (3 Comp. Dec., 27), the following quotation from which (pages 30, 31) shows the view taken by that officer:

"In reviewing this legislation, it is to be noticed that in the act of June 19, 1894, in which it was first provided that payment might be made to employees of the Government Printing Office of a money equivalent for leaves of absence which they had not taken, the words 'to pay *pro rata* leave of absence' were used instead of 'grant *pro rata* leave of

absence with pay,' which would have been the natural language to use if it was in fact intended by Congress that payment could only be made for the leave of absence actually taken, as was provided in the earlier acts relating to leaves of absence to employees of the Government Printing Office, and this seems to be emphasized by the use in the same sentence of the act of June 19, 1894, of the words, 'notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year.'

"The distinction thus drawn between 'pay for leave of absence' and 'leave of absence with pay' continues in the acts of March 2, 1895, and June 11, 1896, but seems to have been overlooked by both Mr. Foree and myself in our decisions above referred to. Any doubt about the deliberate use of these terms by Congress as meaning two different things seems clearly to be removed by the provisions in the acts of June 19, 1894, March 2, 1895, and June 11, 1896, which authorize payment to former employees of the Government Printing Office and to the representatives of those who have died. I am clearly of the opinion, therefore, that the decisions of the Acting First Comptroller and of myself, above referred to, were wrong, and that the Public Printer was authorized to pay to any employee severing his connection with the Government Printing Office the money equivalent of the *pro rata* leaves of absence which had accrued but which had not been taken by such employee, and that the provision was not intended to authorize the granting of more than thirty days' actual leave of absence in any one fiscal year to any employee of the Government Printing Office continuing in its employment.

"The intention of the various enactments since June 19, 1894, evidently is to authorize payment to any employee who severs his connection with the Government Printing Office of all the leave of absence which has accrued to but has not been taken by him, not exceeding thirty days, for the prior fiscal year, and the *pro rata* proportion of thirty days for the year in which he severs his connection. This I understand to be the practice of the Government Printing Office, for notwithstanding the fact that in terms the resignation of an employee is accepted to take effect after the expiration of the leave of absence granted to him, payment for such leave is made immediately upon the granting of the leave, and not at the expiration thereof, and, further-

more, no *pro rata* leave of absence is granted to an employee of that office who continues in the service."

II.—Brief of Argument.

Recapitulation of History of Leaves of Absence.

By the acts of 1886 and 1888 Congress allowed "a leave of absence, with pay," of fifteen and then of thirty days, including (in the act of 1888) "*pro rata* leave to those serving fractional parts of a year" (*ante*, pp. 4, 5). These acts, by decision of the Court of Claims in *Harrison v. United States* (26 C. Cls., 259), (*ante*, p. 5), did not have the effect of allowing payment for a leave of absence accrued but not taken.

By acts of 1894 and 1895 (*ante*, pp. 6, 7), the Public Printer was "authorized to pay *pro rata* leave of absence."

By act of 1896 (*ante*, pp. 7, 8), a number of new provisions relative to leaves were introduced, among which was "That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year."

The Senate, contemporaneously with the enactment of that act, called upon the Public Printer to communicate the names of all employees "in the fiscal years 1890, 1891, 1892, 1893, and 1894, who failed to receive their annual leaves of absence during those fiscal years, and the amount due each person for each fiscal year separately on account of such failure." (*Ante*, p. 9.)

The Public Printer, in 1897, answered this resolution by transmitting the names of such persons not only for the fiscal years indicated, but going back to the fiscal year ending June 30, 1887, and also calling attention to the fact that "many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leaves of absence with pay," and he included in the list "the amounts of *pro rata* leave which accrued to such persons."

We have introduced in the statement of the case (*ante*, pp. 9–12) the full text of the letter of the cashier of the Government Printing Office transmitted by the Public Printer to the Senate in response to its resolution of inquiry, which letter, with the accompanying list, formed the basis of the appropriation made by Congress, as stated in Finding V (Record, p. 3). The terms of that letter are important as showing the subject-matter upon which Congress was acting and will, in the subsequent part of this brief, be referred to for that purpose. In introducing and referring to this letter as throwing light upon the construction of the appropriation act we are fully warranted by the following decisions of this court:

Romero v. United States, 1 Wall., 721.
Collector v. Richards, 23 Wall., 246, 258.
Blake v. National Banks, 23 Wall., 307, 319.
United States v. Steever, 113 U. S., 747, 755.
American Net and Twine Co. v. Worthington, 141 U. S., 468, 474.
Holy Trinity Church v. United States, 143 U. S., 457, 464.
Caha v. United States, 152 U. S., 211, 222.
The Delaware, 161 U. S., 459, 472.
Oakes v. United States, 174 U. S., 778, 796.

In the Court of Claims there is a special ground for the right to refer to documents of this kind, which form the basis of congressional action, in the provision of section 1076 of the Revised Statutes, that that court "shall have the use of all recorded and printed reports made by the committees of each house of Congress when deemed necessary in the prosecution of its business."

Accordingly the practice in that court is as stated in the opinion, delivered by the late Chief Justice Richardson, in *Badeau v. United States* (21 C. Cls., 48, 50):

"Courts take judicial notice of some circumstances outside of an act which go to show its meaning, and in doing so they frequently take a wide range of illustration and investigation from public records, public documents, general and local history, and other matters of such general and public notoriety as may be supposed to have been in the minds of all the legislators when the act was passed, but they never admit the opinions and evidence of individual witnesses for that purpose (*The Slaughter-house cases*, 16 Wall., 37; *Blake v. National Banks*, 23 Wall., 317; *Brown v. Piper*, 91 U. S. R., 42; *Blake v. United States*, 103 *id.*, 235; *Wilson v. Spalding*, 19 Fed. Rep., 304; *State v. New Orleans Pacific Railroad*, 30 La. Ann., 980; *People v. Stevens*, 71 N. Y., 527; *Fisher v. United States*, 15 C. Cls. R., 323; *Fendall v. United States*, 16 *id.*, 121)."

See also *Austin v. United States*, 25 C. Cls., 437, 454; affirmed, 155 U. S., 417.

No objection was made in the court below, and it is presumed none will be made here, to our reference to this letter of the Public Printer as throwing light upon the construction of the act passed in conformity with its recommendation.

July 19, 1897, Congress appropriated the full amount necessary to pay all claims "for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive," that appropriation including claims of both permanent and temporary employees.

Thus Congress, instead of granting only "a leave of absence with pay," now allows, as an alternative, "pay for *pro rata* leave of absence."

Effect of Change of Language.

It must be assumed that this change of language was deliberately made by Congress, and that, as the words mean different things, it was intended to make a change in the law.

In *United States v. Bowen* (100 U. S., 508) this court held

that the introduction of the one word "such" into a certain provision of law, when carried into the Revised Statutes, effected an entire change from what the law was previously to the enactment of the revision.

So, too, in *United States v. Fisher* (109 U. S., 143) it was held that the introduction of the words "in full compensation" into an appropriation act limited the officer to the amount so appropriated and changed the salary from what it had been prior to the enactment of the statute. The court said (p. 146):

"We cannot adopt the view of appellee unless we eliminate from the statute the words 'in full compensation' which Congress, abandoning the long-used form of the appropriation acts, has *ex industria* inserted."

To the same effect is *Converse v. United States* (26 C. Cls., 6, 10), quoted in brief for United States, p. 15.

In *Adams v. United States* (20 C. Cls., 115), recently cited with approval in *Glavey v. United States* (182 U. S., 595, 607), the opinion of the Court of Claims opens (p. 116):

"This suit grows out of a change by the Revised Statutes, possibly inadvertently made, in the compensation of inspectors of customs."

Yet, notwithstanding the suggestion that the change was due to inadvertence, effect was given to it and the law in its amended form enforced.

In the present case the circumstances leave no doubt that the change of phraseology was intentional and not accidental.

The acts of 1886 and 1888, allowing "leave of absence with pay," had been construed by the Court of Claims, in 1891, in the *Harrison* case (26 C. Cls., 259) not to entitle the employees to commutation for unused leave of absence. In full view of this decision, Congress, in 1894 and 1895, adopted a changed form of phraseology, "to pay *pro rata* leave of absence," and, in 1896, made this still more explicit by its

provision for "pay for *pro rata* leave of absence." Moreover, the Public Printer, in his report in answer to the Senate resolution, transmitted in 1897, said (*ante*, p. 12):

"This law, in the course of its operation, has been subjected to various interpretations and restrictions by the Treasury Department *and Court of Claims*, and as the result of recent legislation of Congress many objectionable features which have heretofore existed have been removed and you have therefore been enabled to administer the provisions of the law according to its original intent and purpose, and, as I have reason to believe, to the general satisfaction of its beneficiaries."

The reference to the interpretation of former statutes by the Court of Claims could have been only to the *Harrison* case, as that was the only existing decision of the Court of Claims on the subject of leaves of absence in the Government Printing Office. The Public Printer, therefore, meant to call the attention of Congress to the fact that recent legislation had removed the restrictive feature found by the Court of Claims to exist in prior legislation, and had permitted the allowance of a commutation for a leave of absence when not taken in kind. He also called attention to the fact that "many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period" (*ante*, p. 11).

In full view of this report of the Public Printer, calling attention to the decision of the Court of Claims in the *Harrison* case, Congress enacted the provision of the deficiency appropriation act of 1897 (*ante*, p. 13), by which nearly $60,000 was appropriated for the payment of "such sums as may be due said employees and former employees for accrued but unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive." Thus, Congress, by this retroactive provision, confirmed the view of the Public

Printer that recent legislation had removed the restrictive features found by the Court of Claims in prior acts, and, by granting the commutation of leave of absence to both permanent and temporary employees, in effect, decided that all employees, whether permanent or temporary, whether employed for more or for less than one year, were entitled, either to leave of absence with pay, or to pay *pro rata* for leave not taken.

The view taken by counsel for the United States of the effect of the act of 1896 is (Brief for United States, p. 34) that "it simply grants to temporary employees of the Government Printing Office *pro rata* leaves of absence, in kind, with pay, and allows them nothing more." But if this view is correct the original leave of absence acts of 1886 and 1888 (*ante*, pp. 4, 5) required no amendment, for they already allowed leave of absence with pay. An intelligent purpose must be ascribed to Congress in making this change of language, and that purpose is only satisfied by holding that a change was made in the law.

No Discrimination Between Permanent and Temporary.

The whole legislation taken together shows that Congress adopted as a feature of its policy towards the employees of the Government Printing Office the granting of leaves of absence or of money commutation for such leaves as are not taken in kind. The act has been construed in this sense by the Government Printing Office and by the accounting officers of the Treasury, so far as applies to the permanent employees of the office. The Comptroller, in his decision already quoted (*ante*, pp. 14, 15), thus states the practice:

"The intention of the various enactments since June 19, 1894, evidently is to authorize payment to any employee who severs his connection with the Government Printing Office of all the leave of absence which has accrued to but has not been taken by him, not exceeding thirty days, for the prior

fiscal year, and the *pro rata* proportion of thirty days for the year in which he severs his connection. This I understand to be the practice of the Government Printing Office, for notwithstanding the fact that in terms the resignation of an employee is accepted to take effect after the expiration of the leave of absence granted to him, payment for such leave is made immediately upon the granting of the leave, and not at the expiration thereof, and, furthermore, no *pro rata* leave of absence is granted to an employee of that office who continues in the service."

The reason for the non-allowance of the leaves of absence or commutation therefor to the present claimant is explained in Finding IV, page 3, as follows:

"No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave."

Is this discrimination between permanent and temporary employees warranted by the terms of the law?

So to hold would be to ignore the clause of the act of 1896, "that it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year." This clause is the last of several which embrace by specification every possible employee of the Government Printing Office, no matter in what way or for what time engaged. The paragraph defines in its opening clause, as widely as possible, the class of persons intended to be benefited. Its language is "The employees of the Government Printing Office, whether employed by the piece or otherwise." It then goes on to provide separately for "such employees as are engaged on piece-work," "those regularly employed on the *Congressional Record*," and "those serving fractional parts of a year." Thus, not only is the opening definition as comprehensive as possible, but the subsequent specification of classes shows that it was designed to include every class of persons

who could possibly be engaged at work in the Government Printing Office.

The position taken by counsel for the United States invites the court not only to disregard the comprehensive definition of "the employees of the Government Printing Office," and to limit the language so as to make it signify only "some of the employees of the Government Printing Office," but also to disregard the provision specially inserted for the benefit of "those serving fractional parts of a year."

"'The good expositor,' says Lord Coke, 'makes every sentence have its operation to suppress all the mischief; he gives effect to every word in the statute; he does not construe it so that anything should be vain and superfluous, nor yet makes exposition against express words' (Dwarris on Statutes, 577)." (*Fisher v. United States*, 15 C. Cls., 323, 327).

The Words "It Shall Be Lawful."

The Court of Claims holds (Rec., p. 5):

"In saying 'that it shall be lawful to allow pay for *pro rata* leave' the new statute imposed the general obligation on the Public Printer to allow the *pro rata* leave of absence with pay in kind on those serving fractional parts of a year. Though this statute is only permissive in terms, the authority must be construed to be a duty in general. The words 'it shall be lawful' are mandatory."

In support of this proposition many cases are cited (top of p. 6). One of them, very strongly in point, is that of *Supervisors v. United States*, 4 Wall., 435. There a statute providing that a board of township supervisors "may, if deemed advisable, levy a special tax to pay the debts of the township" was held mandatory to levy such tax wherever the debt had been reduced to judgment. In support of this conclusion the cases of *Mayor of New York v. Furze*, 3 Hill, 614, and *Mason v. Fearson*, 9 How., 248, were referred to. In the latter of these cases the following construction is

placed upon the identical words used in the statute now under discussion, 9 How., 259:

"The form of expression adopted here, it must be remembered, is employed in laws, and not contracts, and of course, if a well-established construction had been before given to it in laws by the courts under certain circumstances, it must be presumed to have been well known, and intended here under like circumstances. What are these circumstances? Whenever it is provided that a corporation or officer 'may' act in a certain way, or it 'shall be lawful' for them to act in a certain way, it may be insisted on as a duty for them to act so if the matter, as here, is devolved on a public officer, and relates to the public or third persons."

So, too, in *Hugg v. Camden*, 39 New Jersey Law, 620, a statute provided (p. 621):

"That if the full amount shall not be paid and satisfied within the time limited and appointed for the payment thereof, 'it shall and may be lawful' for the city council to cause the lands, tenements and real estate or such parts thereof as they may think proper, to be sold at public auction, etc."

The court says (p. 622):

"It is claimed, on behalf of the council, that they have a discretion in the collection of these taxes against lands, and may grant indulgence to delinquent tax-payers, by extending the time of payment, to meet the hardship, in some cases, of a strict enforcement of the law. The authority for this is sought in the words of section 64 of the charter—that it shall and may be lawful for the city council to cause the lands, or so much thereof as they may think proper, to be sold at public auction. But these words 'it shall and may be lawful,' in this statute, are mandatory, not directory and discretionary. The power conferred by them must be exercised. It is a settled construction, that where a public or municipal corporation, or body, is invested with power to do an act which the public interests require to be done, and has the means for its complete performance placed at its disposal, not only the execution, but the proper execution of the power

may be insisted on as a duty, though the statute conferring it be only permissive in terms."

Application of Authorities.

The intent of Congress in using the permissive form in the act of 1896 is almost too clear for controversy. Previous acts allowed a leave of absence with pay. If this leave of absence were taken, there would be an end of the matter, and the employee would have no claim for any sum of money in commutation. This statute re-enacts laws already in force, and provides in peremptory terms that the employees of the Government Printing Office "shall be allowed leaves of absence with pay." The terms of the enacting clause are broad enough to include all the employees, even though employed by piece-work, for in express terms it extends to all of them, "whether employed by the piece or otherwise." As, however, it might readily happen that a time could not easily be found at which the leave of absence could be taken, an alternative is provided, of which the Public Printer is at liberty to take advantage if he deems it for the better interest of the Government to do so, "that it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence," etc.

It was permissible for the Public Printer to allow either the leave of absence in kind, or *pro rata* compensation for unused leave. To hold that it was permissible to allow neither leave of absence in kind nor pay for accrued but unused leave would impute to Congress the absurd purpose of allowing to the employees of this office the alternative of a leave of absence or pay for leave not taken, and then permitting them to be deprived of both. To put it from the converse point of view, it would be to hold that upon an employee going out of office, whether by resignation, discharge, or death, with accrued leaves standing to his

credit, it would be "lawful"—that is, permissive—for the Public Printer to make him a grant of a sum of money, but that if the Public Printer made him no such grant he had no legal means of enforcing his right either to the leave of absence or to the pay for unused leave. A case could readily be imagined in which of two men working side by side and having the same amount of accrued leave due them, the accrued leave of absence would be paid to one, while it would be denied to the other.

It is contended by counsel for the United States (conclusion of Brief, pp. 34, 35) that—

"The Public Printer had no right to pay an employee for a leave of absence after his connection with the Government Printing Office had been severed, but if the Public Printer had desired to pay an employee who was serving for a fractional part of a year in that office, and whose connection with the office was about to be severed, he might have granted him a *pro rata* leave with pay, and provided that at the expiration of said leave he should be discharged from further employment in that office, and have paid him for said *pro rata* leave at the time he actually discontinued his work in said office."

But if the act of 1896 means anything, it means to confer this "pay for *pro rata* leave of absence" upon the employees of the Government Printing Office as an absolute right and to take away from the Public Printer the power to give it to one and withhold it from another by a mere difference in the form of dismissal.

Failure to Apply for Leave or for Mandamus.

It is insisted in the brief for the United States (pp. 3–7) that the proper course of the claimant was to apply for a leave of absence during his term of service, and, if it were refused, to apply for a mandamus on the Public Printer to compel its allowance.

One answer to this suggestion is that at no time did the claimant become entitled to demand the immediate grant of a leave of absence. None of his periods of service extended to as great a length as a year at a time. An application to the Public Printer for a leave of absence would have been futile "for the reason that, under the rules adopted by the Public Printer regarding leaves of absence, persons temporarily employed were not granted leave" (Finding IV, Record, p. 3).

The adoption of this rule constituted an exercise of the option vested by law in the Public Printer against the allowance of leave in kind. Were a demand for leave otherwise necessary it would clearly be excused under the rule stated in *United States v. Lee*, 106 U. S., 196, 202:

"The proposition is thus expressed by this court at its last term in *Hills v. Exchange Bank*, 105 U. S., 319, as the result of the cases above cited: 'It is a general rule that when the tender of performance of an act is necessary to the establishment of any right against another party, this tender or offer to perform is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.'"

The opinion of the Court of Claims concedes, and properly (p. 5), that "the Public Printer might control the time of leaves and refuse the same in an exigency." The Public Printer being invested by law with discretion either to grant the leave of absence in kind or to pay its commuted value, no mandamus was available to compel its allowance in kind. The claimant at no time served for a whole year. When he was notified that his services were no longer required, his right under the statute first accrued. It would have been useless then for him to apply for a mandamus to grant him a leave of absence, for he had been placed out of service for an indefinite period.

Another reason that an application for mandamus was not only not required, but would have been absolutely improper, is found in the very nature of the relation of the

claimant to his official superior. The Public Printer was not only the appointing power, but he was also the directing power and the removing power. The claimant, as a compositor temporarily employed, was one of those purely inferior and subordinate officers aptly described in the *Twenty Per Cent. cases* (13 Wall., 568, 575):

"Ministerial offices are those which give the officer no power to judge of the matter to be done, and which require him to obey some superior, many of which are merely employments requiring neither a commission nor a warrant of appointment, as temporary clerks or messengers."

"Obedience to orders" is named first among the "duties of a moral character" of officers by Professor Goodnow (2 Comparative Administrative Law, 82). To such an officer the statement in Mechem on Public Offices (section 523) would emphatically apply:

"It is not within the scope of the duties of a ministerial officer to pass upon the validity of laws, instructions, or proceedings *prima facie* valid, and requiring his action. His only duty in such a case is obedience."

Winthrop, in his Military Law (vol. 1, p. 812), thus states the rule in the military service:

"The obligation to obey is one to be fulfilled without hesitation, with alacrity, and to the full; nothing short of a physical impossibility ordinarily excusing a complete performance."

And he adds later on (p. 813):

"Even where the order is arbitrary or unwise, and its effect must be injurious to the subordinate, he should first obey, postponing till after compliance his complaint and application for redress."

And the rule can be no different in the civil service. The administrative machinery of the Federal Government is now

so vast and complicated that immediate compliance on the part of all inferior officers with the commands of their superiors is essential to its efficient operation. This court has said of a letter-carrier, *United States v. Post* (148 U. S., 124, 133):

"The postmaster was the agent of the United States to direct the employment, and if the letter-carriers had not obeyed the orders of the postmaster, they could have been dismissed. They did not lose their legal rights under the statute by obeying such orders."

Even in private employment the same inequality is recognized by this court as a practical truth. Having before it the Utah statute, prohibiting the employment of miners for more than eight hours, this court said, *Holden v. Hardy* (169 U. S., 366, 397):

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority."

This court has said in a case of mandamus, *United States v. Boutwell* (17 Wall., 604, 607):

"It is an imperative rule that previous to making application for a writ to command the performance of any particular act, an express and distinct demand or request to perform it must have been made by the relator or prosecutor upon the defendant, and it must appear that he refused to comply

with such demand, either in direct terms or by conduct from which a refusal can be conclusively inferred. Thus it is the personal default of the defendant," etc.

It would have to be a severe case of oppression under color of office, which would even justify a mere subordinate in the Government Printing Office, and a temporary one at that, in making a peremptory demand upon the Public Printer, the head of that great office, and then, upon refusal, in treating him as in personal default. Much less will the subordinate be treated as himself in default because he did not invoke the compulsory process of the courts against his official superior.

Of course, if the claimant in this case was entitled to make a peremptory demand for his leave of absence and on the refusal of the Public Printer to apply to the courts for a mandamus to compel its allowance, so were all the other temporary employees. The idea of two hundred employees of the Government Printing Office, all of them only temporarily in service, peremptorily demanding of the Public Printer their right to an immediate leave of absence, and then applying to the courts for relief by way of mandamus, suggests a subversion of all established discipline which stamps the proposition as impossible of realization in a well-ordered administrative system. A theory so impracticable of application to the actual conditions of the Government service should be equally untenable when set up as a defense to an otherwise valid claim.

But it is unnecessary to consider further the question whether in any case the writ of mandamus can be granted at the suit of a subordinate officer against his superior as a relief from official oppression. No such use of the writ has ever been known in the courts of the United States. And there was not in this case any oppressive conduct on the part of the Public Printer. Indeed, it is but fair to add that he was not guilty of any violation of law whatever. He exer-

cised a lawful discretion in the adoption of the rule or practice, set forth in Finding IV (Record, p. 3), not to allow leave of absence to persons temporarily employed, and the only consequence of his action in so doing was to entitle the temporary employee, to whom such leave was not by the rules accorded in kind, to the statutory alternative of *pro rata* pay for such leave.

The true course for a subordinate officer to adopt in such a case was the precise one which was in fact adopted by this claimant. He obeyed without question the orders given him at the time, relying only upon the laws of his country for the vindication of his legal rights. At the proper time and within the six years allowed by law (R. S., sec. 1069) he made his application in the regular course of justice to the Court of Claims for his statutory *pro rata* pay for his leave of absence.

An application for mandamus would have been wholly inappropriate as a means of collecting his money claim for the commutation, or, to use the statutory phrase, "*pro rata* pay," for leave of absence. The writ of mandamus is available only where there is no other legal remedy. It never applies where the claim is a money demand against the United States "founded upon a law of Congress," cognizable under the general jurisdiction of the Court of Claims (*United States v. Knox*, 128 U. S., 230, 235). Even before the establishment of the Court of Claims, mandamus was held to be an inappropriate remedy for the collection of a claim against the United States (*Reeside v. Walker*, 11 How., 272, 290).

The claimant, therefore, not having received the "leave of absence, with pay," became entitled to the statutory alternative of "pay for *pro rata* leave of absence." This being a money demand against the United States, the only appropriate forum for its enforcement was the Court of Claims. No precedent demand was necessary (*Clyde v. United States*, 13 Wall., 38).

Acceptance of Payment for Services No Bar.

It is also claimed on behalf of the United States (pp. 8, 9) that the claimant is barred from the assertion of this demand by having accepted payment in full for the services rendered by him in the Government Printing Office. There is no finding in the record as to any such acceptance, further than the general terms of Finding II (p. 3):

"During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months."

It is difficult to understand upon what theory the acceptance of payment for services rendered can be set up in bar of a claim of a different character for *pro rata* pay for leave of absence arising under distinct statutes, of which statutes he has never had any benefit whatever. Even the receipt and acceptance, as of full salary, by an officer has never been held to be a bar to a claim for a higher salary (*United States v. Langston*, 118 U. S., 389). Even an express stipulation to waive official compensation conferred by law is against public policy, and will not be enforced against the claim of the officer (*Glavey v. United States*, 182 U. S., 595). Much less can any such bar arise in the present case, where there has been no waiver of the claimant's rights under these provisions of law, nor any act from which an intention to waive them can be inferred.

Examining this theory in the light of actual conditions, we ask: Is it seriously contended that it was the duty of this claimant, working presumably for his daily bread, to refuse all payment tendered him for his daily services until his claims under the leave-of-absence acts were also settled? And is it contended that if he did accept payment for his

daily services he thereby waived and released all claim for his *pro rata* pay under the leave-of-absence acts? If so, it would be in vain for Congress to attempt to confer rights upon any officials in a subordinate position, for those rights could be taken away from them by the officers appointed to pay them by the easy means of paying them less sums than what the law allows, or, as in this case, paying them for a Government obligation of one class and then pleading that payment in settlement of one of another and different class.

Counsel for the United States in support of this point quote (p. 9) from *United States v. Garlinger*, 169 U. S., 316, 322. Were the quotation continued through the next paragraph, it would appear that these circumstances were not regarded as of controlling force, but only as tending to show the construction put by the parties themselves upon a statute which the court had already construed adversely to the claimant's demands. "We do not want to be understood as saying that the mere fact of receiving money in payment will estop a creditor" (p. 323).

Again, the question involved in that case was as to a double per diem claimed where only a single one had been paid and accepted. This court regarded the pay for each day's service as capable of being regarded as an indivisible unit, and therefore thought that if each day had been paid for as only a single one, there was some presumption against a subsequent claim that it was to be paid for as double service.

In the present case there is no complaint as to the claimant's daily or even hourly pay, which he has received in full in accordance with the statutes defining it.

The rights now claimed are distinct rights arising under a different statute from that defining his daily and hourly rate of pay, and there has never been a settlement of his claim under those acts.

No Accumulation of Leaves.

As the claimant in this case in no instance served for a full year, it is difficult to see what bearing the provision against accumulation of leaves has upon his case, as contended in the brief for the United States (pp. 29, 30).

The act of June 19, 1894, is admitted by counsel to have "permitted the leaves of regular employees to accumulate to the extent of two years, and this provision was also incorporated in the act of June 11, 1896."

It is true that it is added immediately afterwards, "but nowhere are the leaves of those serving for fractional parts of a year permitted to accumulate at all."

But no one term of service of this claimant was as long as a year, and his entire service did not aggregate two years; hence there was no accumulation of leaves. It is difficult to see also what effect the accumulation, if it existed, could have, except to increase the claim. The law does not say that an accumulation shall render the claim void, but that "such leaves of absence shall *not be allowed* to accumulate from year to year"—evidently meaning that they shall not be allowed by the Public Printer so to accumulate.

The failure to allow either the leave of absence in kind or the *pro rata* pay therefor would seem to constitute an infraction of the law by the Public Printer, if by any one—not by the employee, who was without power to exercise the choice between taking the leave in kind and the money commutation for the same. The discretion which of these two to allow was vested by law in the Public Printer. If the Public Printer by neglecting the allowance of leaves permits them to accumulate, it is he and not the employee who has allowed the accumulation contrary to the policy of the law.

This point, however, need not be further considered, as the leaves in this case did not, within any true construction

of the law, "accumulate from year to year." Each term of service stood on a separate footing, and no one of them was as long as a year.

Pay for Unused Pro Rata Leave Intended.

It is next insisted (p. 30) that when Congress enacted "that it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year," it failed to express with accuracy the idea that the pay was to be for an accrued but unused leave, and that, instead of "*pro rata* leave," it should have said "unused and accumulated *pro rata* leaves."

The difficulty with this point is that it fails to grasp the distinction between "leave of absence with pay" and "*pro rata* pay for leave of absence." All leaves of absence provided for by law are with pay. This is expressed in almost all the statutes quoted (Brief for United States, pp. 22–28), and notably was so in the leave of absence acts for the Government Printing Office prior to the decision in the *Harrison* case (*ante*, pp. 4, 5). Where a leave of absence without pay is intended, it is always expressly so stated.

Again, the words "*pro rata*" would have no meaning if the law were not intended to apply to accrued leaves of absence which had not been taken. If the leave of absence had been taken in kind the employee, whether permanent or temporary, would receive his full pay during the continuance of the leave. Such is the law in all departments where leave of absence is granted.

The enactment of "pay for *pro rata* leave" was the introduction of a new and exceptional feature in the legislation for the Government Printing Office, resulting in giving its employees not merely the "leave of absence with pay" to which the original legislation of 1886 entitled them, but pay *pro rata* to the time of their employment for the leave of absence to which they had become entitled, but which they had failed to receive in kind. Such is the construction

which the Court of Claims has, by its opinion, placed upon the act of 1896. No other could be adopted without failing to give effect to the new and emphatic language used in that act, distinguishing it from the earlier legislation of 1886 and 1888.

The Act of 1897.

It is next contended (Brief for United States, p. 30) that the act of 1897, providing for the payment of accrued and unpaid leaves of absence for the fiscal years from 1887 to 1894, affords evidence that Congress did not consider those employees entitled to such payment without special legislation for their benefit. But so far as the act is an expression of opinion on the part of Congress, it constitutes rather the highest and most formal possible evidence that Congress considered that they were entitled to it. As such acts are construed in *United States v. Realty Company*, 163 U. S., 427, 440, it was a decision that these claims constitute debts of the United States and appropriating money for their payment.

The furthest that such an act could be said to go in the direction suggested by counsel for the United States was that Congress recognized that there was no other mode of collecting such a claim than through special legislation.

In view of the decision of this court in *Harrison v. United States*, 26 C. Cls., 259, the claims were certainly of the class of which this court has said (163 U. S., 440):

"The debt could obtain no recognition in a court of law."

No such considerations apply to the claims arising subsequently to that time, because the law was changed by the new legislation which culminated in the act of 1896 (p. 67).

If we may regard the act of 1897 in the light of a declaration of policy on the part of Congress, as apparently counsel for the United States would do, the only effect it can be said to have in that direction is that Congress was so convinced

of the justice of the policy established by the act of 1896 for the future that by the act of 1897 it determined to make the same principle retroactive and to recognize claims extending clear back to the enactment of the original leave of absence law in 1886.

Thus, so far from throwing the least doubt upon the construction placed by the Court of Claims upon the act of 1896 the act of 1897 tends strongly to support that construction as in harmony with the views of the same Congress which passed it.

The communication of the Public Printer, upon which the legislation of 1897 was based, showed upon its face that it was based upon the idea that the *pro rata* pay due the employees for accrued and unpaid leaves of absence was a debt which Congress ought to liquidate. Referring clearly to the act of 1896, it is said (*ante*, p. 12), that "as the result of *recent legislation* of Congress, many objectionable features which have herotofore existed have been removed." As the writer in the previous clause of the same sentence had referred to the interpretation of this court, and as the only interpretation of these statutes was that contained in the *Harrison* case, it is perfectly clear that in the opinion of that officer the objectionable feature deemed to have been removed by recent legislation was the denial of *pro rata* pay for accrued but unused leaves of absence. In this light the enactment of 1897, alluding as it does to the sums thereby appropriated as "due said employees and former employees for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive," affords proof positive that Congress determined upon carrying out the liberal policy of the act of 1896 clear back to the original enactment of the leave of absence law from the beginning of the fiscal year ending June 30, 1887.

Counsel for the United States (pp. 19, 20) seem to suppose the purpose of the act of 1897 to have been to allow these employees their pay for past years for leaves of absence

which they had had without pay. But this is inconsistent with the terms of the appropriation as well as with the letter from the Government Printing Office which formed the basis of the appropriation. It is, moreover, directly contradicted by Finding V (Record, p. 3) that "all employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all *accrued but unused* leaves of absence."

Revised Statutes, Sections 1764, 3648.

It is exceedingly difficult to appreciate the bearing of the argument (p. 31) attempted to be based upon these sections. This claim is not for "services rendered by claimant during the leaves of absence to which he was entitled, but which he did not receive." It is, on the contrary, for the commuted value of a leave of absence originally conferred upon this class of employees by the act of August 1, 1888, but which was converted into a money claim by the subsequent legislation. In this view the claim is in no respect for "extra services;" and even if it is, the payment is "expressly authorized by law."

The legislation now under consideration is long subsequent to the enactment of section 1764, and hence would repeal any portion of that section inconsistent with it or the whole, if necessary.

As for section 3648, a reading of the entire section shows that it has no application.

Anomalous Legislation.

The Court of Claims has well described in the passage of its opinion set out in the brief for the United States (p. 32) the legislation which it has construed as "anomalous." That fact plainly appears upon a comparison of its terms with those

of other leave-of-absence acts cited at pages 22 to 28 of the brief of counsel. The more anomalous it is, the more reason there is for construing it as meaning something different from other acts.

Exceptional language, departing in so marked a degree from that used in relation to all other branches of the public service, means something different from what the former acts did. As this court said of a new and different phrase first introduced in an act of Congress:

"We cannot adopt the view of appellee unless we eliminate from the statute the words 'in full compensation,' which Congress, abandoning the long-used form of the appropriation acts has, *ex industria*, inserted." (*United States v. Fisher*, 109 U. S., 143, 146.)

Expediency.

And, as the Court of Claims said in the same case, in answer to an argument of inexpediency urged upon it by the claimant in that case as it is urged by the Government in this:

"With the expediency or inexpediency of the policy of Congress in thus reducing salaries temporarily, by provisions in annual appropriation acts, we have no concern. However objectionable such a course may seem to others, it is within the constitutional power of Congress, and must be respected and obeyed and not circumvented or evaded by the courts." (*Fisher v. United States*, 15 C. Cls., 323, 329.)

Literal Construction Required.

A construction on the ground of inconvenience is urged (p. 33) on an authority which declares that under certain circumstances "a statute may be construed contrary to its literal meaning." The cases in which any such construction is admissible are very few and far between.

The rule which this court now acts upon, and the only safe

rule, is that of literal construction laid down in *Dewey v. United States*, 178 U. S., 510, 520:

"Of course, our duty is to give effect to the will of Congress touching this matter. But we must ascertain that will from the words Congress has chosen to employ, interpreting such words according to their ordinary meaning as well as in the light of all the circumstances that may fairly be regarded as having been within the knowledge of the legislative branch of the Government at the time it acted on the subject."

This court overrules most distinctly (p. 521) the argument made in the brief for the United States based upon the general consideration of a supposed public policy.

The act of 1896 is entitled to be enforced in accordance with its terms and not explained away.

Purpose of the Law.

While this act is different from leave-of-absence acts in other departments of the Government, its object is clear. The allowance of the *pro rata* pay to these temporary employees is simply a humane provision at the end of their period of temporary service to enable them to support themselves during the period when they should be seeking other employment.

It is a fact too well known to escape judicial notice that not only is trade of every kind more active at the national capital during the sessions of Congress, but that this is especially true in regard to the trade of the printer.

An examination of the dates during which this particular claimant was from time to time employed in the Government Printing Office (Finding I, Record, p. 2) discloses that he was, as a rule, employed there during the very times of the year when he could probably have secured ready employment at his trade in private printing offices in the city, and was laid off at the very times when work was beginning

to be dull in the private offices and when it would be most difficult to secure remunerative employment.

Every reason which could induce Congress to grant *pro rata* pay for leave of absence to the regular employees of the Government Printing Office applies with equal, if not greater, force to its allowance to those serving fractional parts of a year. Such pay at the expiration of their periods of employment is nothing more than a proper and humane provision to enable them to support their families while looking for new work.

Legislative Precedents.

The purpose is the same which has induced Congress, at the close of our various wars, to grant extra pay to the officers and sometimes also to the enlisted men, necessarily discharged at the expiration of the war. The purpose of such legislation is forcibly stated in *United States v. Merrill* (9 Wall., 614, 616):

"The obvious purpose of that provision was that when they came to be discharged they should not be left without any compensation during the period which in all probability would elapse before they would be able to establish themselves in remunerative business pursuits."

As to the similar provision in the Mexican war, see *United States v. North* (112 U. S., 510). Other legislation of a similar character is considered by the Court of Claims in *Schaeffer v. United States* (11 C. Cls., 730); *Hildeburn v. United States* (13 C. Cls., 62); *Duryea v. United States* (17 C. Cls., 24), and *Cleary v. United States* (35 C. Cls., 207).

While these precedents of legislation are not required in order to justify the action of Congress, they go far to explain its meaning and purpose in the enactment of these statutes.

Hardships Not Involved.

But while the reason of the law is intelligible in the light of the legislation in analogous cases, we think counsel for the United States misconceive the decision of the Court of Claims if they suppose it (Brief for United States, p. 22) to be in any degree based upon the ground of hardship. No such ground was taken in the argument for the claimant or appears in the opinion of the court below. The claim rests not on a vague appeal for sympathy with the hardships of the claimant, but upon the solid foundation of an act of Congress expressly conferring upon the class of employees to which he belongs the right to an allowance of "pay for *pro rata* leave."

Leaves of Absence in Other Departments, &c.

A number of acts providing for leaves of absence in other departments of the Government service are quoted (Brief for United States, pp. 22–28). Nothing could better illustrate the exceptional character of the legislation in regard to leaves of absence in the Government Printing Office than these statutes relating to other branches of the public service. These acts allow leaves of absence of fifteen, twenty, or thirty days, as the case may be, generally adding the words "with pay." In no instance do they provide for "*pro rata* pay for leave." They must therefore necessarily be construed as the Court of Claims construed the original leave of absence laws for the Government Printing Office in *Harrison v. United States*, 26 C. Cls., 259—that is, as allowing only the leave itself, not commutation for it if not taken.

When Congress, in full view of that decision, changed the law the decision rendered by the Court of Claims simply gives effect to the purpose declared by that change of language. The opinion says (Record, p. 6):

"It was the purpose, if language means anything, for fractional time workers to have the *pro rata* leave with the pay for the time of such leave as the employee might be entitled to have. We must presume the Congress meant what is said."

No General Precedent Established.

It is stated in the brief for the United States (foot of p. 28) that this judgment establishes a precedent embracing every department of the Government where leaves of absence are granted.

Unless it is shown that some other department is by the express terms of some statute entitled to "pay for *pro rata* leave," there can be no claims in any such department for pay for an accrued but unused leave.

It is stated in the opinion of the court (Record, p. 4), and correctly stated, that counsel for the claimant accept the decision in *Harrison v. United States* as a correct exposition of the law at the time it was rendered. If this concession is well founded, no other department has any officials or employees who are entitled to *pro rata* pay for unused leave; for the legislation relative to leave of absence in all these departments is the same as it was in the Government Printing Office when the *Harrison* case was decided.

Thus it is demonstrable beyond question that the decision rendered establishes no such precedent, but affects only the Government Printing Office.

This is practically conceded six pages later (p. 34), where the act as construed by the court below is correctly described as limited "to a comparatively few employees, serving for fractional parts of a year in the Government Printing Office," and criticised as absurd on that very ground.

Exceptional Language, Exceptional Construction.

Exceptional language must have an exceptional construction. It cannot be assumed that Congress, when legislating for the Government Printing Office in language differing in so marked a degree from that employed in provisions for leaves of absence in every other department of the Government, intended nothing more than was provided for such other departments. That intention is demonstrated by the terms of the law itself. It is to allow a leave of absence, with pay, for thirty days in each year to all the employees of the Government Printing Office, with pay for *pro rata* leave of absence accrued, but not taken, in the exact proportion of the term for which each employee has served, whether for the whole or a fractional part of a year.

Conclusion.

As a summary of the whole case we quote the following from the opinion of the Court of Claims (Record, p. 6):

"If we shall hold that the Public Printer could at will refuse the leave of absence in kind as well as the pay for the allowed but unused leaves, then employees serving fractional parts of a year would at the will of the Public Printer be deprived of both the leave and the pay. But this was not intended. It was the purpose, if language means anything, for fractional time workers to have the *pro rata* leave with the pay for the time of such leave as the employee might be entitled to have. We must presume the Congress meant what is said."

Also the following (p. 6):

"Where, then, a leave has not been granted in the case of a temporary employee detained because of the exigencies of the public printing service or discharged without fault on his part because his services are not needed, the payment of a money equivalent for the unused *pro rata* leave is conferred

by the statute. If the temporary employee is entitled to leave with pay for that *pro rata* period of recreation, it follows that he should have pay for the leave denied to him."

The judgment of the Court of Claims should be affirmed.

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Supreme Court of the United States.

No. 252.—October Term, 1902.

The United States, Appellant, vs. Arthur B. Barringer. } Appeal from the Court of Claims.

[February 23, 1903.]

The findings of the Court of Claims upon which it predicated the conclusion that the plaintiff was entitled to judgment against the United States are as follows:

"I. The claimant, Arthur B. Barringer, was from time to time employed as a compositor in the Government Printing Office during the following periods: December 31, 1895, to February 26, 1896, inclusive; July 2, 1897, to July 31, 1897, inclusive; December 10, 1897, to July 16, 1898, inclusive; October 24, 1898, to March 4, 1899, inclusive; October 28, 1899, to April 27, 1900, inclusive, aggregating one (1) year, eight (8) months and twelve (12) days.

"II. During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year, two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months.

"III. He was not during any of the times of his employment allowed leave of absence or *pro rata* pay for leave of absence. If allowed leave of absence of thirty (30) days a year, he would have been entitled to fifty-one (51) days' leave.

"If instead of taking such leave he had been paid *pro rata* for the same, he would have been paid three dollars and twenty cents ($3.20) a day for thirty-six (36) days and four dollars ($4) a day for fifteen (15) days, amounting to one hundred and seventy-five dollars and twenty cents ($175.20.)

"IV. The claimant did not, at any during his several terms of service, set forth in finding I, apply for a leave of absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave.

"V. All employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all accrued but unused leaves of absence. The last of the appropriations for such unused leaves was that of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60,) made by the act of July 19, 1897, (30 Stat. 134,) and was based on an estimate of the Public Printer, who in transmitting the same to the Senate informed that body that it included 'many employees whose terms of serv-

ice in the office were only for periods of less than one year,' and that 'the amounts of *pro rata* leave which accrued to such persons are herewith included in the respective years in which they were earned.'"

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

Although the court below found that among the rules for the government of the Printing Office adopted by the Public Printer, in pursuance of power conferred by law, there was a rule forbidding the allowance of leaves of absence to temporary employees, the court in effect treated the rule in question as void, since it assumed that, by the acts of Congress governing the Printing Office, temporary employees of the office were entitled to leave of absence with pay. The court deemed that the duration of such leave of absence was such proportion of the yearly annual leave allowed to permanent employees as the period of service of the temporary employee in each year bore to a year's employment. From the premise of law thus assumed the court held that where a temporary employee had not been allowed his leave of absence because of the enforcement by the Public Printer of the rule denying the right to such leave, the temporary employee was entitled to be paid an extra amount equal to the sum of his regular wages for the period which would have been embraced by the leave had it been granted. In effect, therefore, the conclusion of the court was that because the statutes were held to allow to a temporary employee leave of absence with regular pay, they must be construed as allowing to such person extra pay without leave, and this upon the theory that the employee who had a right to leave with pay, who had not received it under the circumstances stated, was entitled, so to speak, to a commutation in money at his regular rate of wages for the period of leave of which he had been deprived.

The conclusion thus reached was stated by the court to be exceptional and anomalous, but was deemed to be required by what was conceived to be the unambiguous purport of a provision, held to be mandatory, found in the act of June 11, 1896, making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1897. (29 Stat. 413.) The provision in question was said to be entirely new in the legislation of Congress with respect to leaves of absence to the employees of the Government Printing Office. Whilst the anomalous result of the conclusion, as observed by the court below, is, we think, apparent, it would seem to us that a yet greater anomaly is involved in the premise which was taken for granted, that is, that the statutes contemplate the enjoyment by mere temporary employees of the provisions of law relating to an annual leave of absence. We think this is so, because singular as may be the conclusion that since employees enjoy the right to leave

with pay, they are therefore entitled to extra pay without leave, we think it is far more singular to conceive that one who is engaged for a temporary employment, say for a day or a week or a month or so, comes within the purview of the statutes providing for annual leaves of absence.

If, however, the acts of Congress compel the adoption of the premise assumed or the conclusion drawn from it by the court, however anomalous they may be, our duty is to enforce the result. Whether the acts of Congress do either cannot be ascertained by a mere reference to the particular proviso in the appropriation act which constrained the judgment of the court below, but must be determined by an examination of the acts of Congress concerning leaves of absence to employees in the Government Printing Office from the beginning. The review of the statutes for the purpose of determining whether leave with regular pay involves the right to extra pay without leave, will also necessarily require us to examine the same statutes upon which the right, if it exists at all, of temporary employees in the Printing Office to leave of absence must rest. In proposing to first investigate such question we are not mindful of the fact that the government at bar did not at all dispute the assumption indulged in by the lower court, but rested its claim to reversal on other grounds. In view of the fact, however, that we must correctly administer the statutes, and that the question as to the right of a temporary employee to leave of absence has been fully presented by the appellees, we shall examine and decide it. The problems, then, for solution in the order stated are, First. Do the acts of Congress which provide for leave of absence to the employees of the Government Printing Office embrace mere temporary employees of such office? and, Second. If such employees are so embraced, do the statutes, whilst providing for leave in favor of the temporary employees with pay during the term of the leave, provide also for extra pay without leave where the leave has not been enjoyed because of a rule of the Printing Office forbidding its allowance?

The original grant of authority to allow leaves of absence, with pay, to employees of the Printing Office was the act of June 30, 1886. (24 Stat. 91.) The statute consisted of two sections, in the second of which it was provided that the act should take effect on and after the first day of July, 1886. The first section is as follows:

"That the employees of the Government Printing Office, whether employed by the piece or otherwise, be allowed a leave of absence, with pay, not exceeding fifteen days in any one fiscal year, after the service of one year, and under such regulations and at such time as the Public Printer may designate. Such employees as are engaged on piece work shall receive the same rate of pay for the said fifteen days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata*, for the time of such employment"

We think the employees embraced within this statute were permanent employees and not those who might be called in for temporary or emergency purposes, since the object of the statute was to provide for annual leave during each fiscal year, and the leave was allowed only after the service of one year. Any doubt as to this construction is removed by the proviso which allows a *pro rata* leave to regular employees of the Congressional Record. As the duration of the work which this class of employees performed was necessarily limited by the sessions of Congress, it is obvious that they were considered as excluded by the general language in the prior portions of the act, and hence an exceptional provision giving them its advantages was inserted. And the proviso itself adds emphasis to the significance arising from its enactment, since it conferred the benefits only on such employees as were *regularly* employed for such work, and therefore excluded those merely called in to meet an emergency in the employment in question.

It is also obvious that the Public Printer in administering this act did not interpret it as embracing temporary employees, since the rules of his office excluded employees of that character from the grant of leaves of absence. And the appropriations made by Congress to execute the act of 1886, one of the acts being enacted by the very Congress which passed the act of 1886, serve to enforce the meaning arising on the face of the act itself. Those appropriations were thus defined: "To enable the Public Printer to comply with the provisions of the law granting fifteen days' annual leave to the employees of the Government Printing Office." (Act August 4, 1886, making appropriations for the fiscal year ending June 30, 1887, 24 Stat. 255; Act of March 3, 1887, 24 Stat. 509, and the urgency deficiency appropriation act of March 2, 1888, 25 Stat. 42, making appropriations for the fiscal year ending June 30, 1888.) From the subsequent legislation, to which we shall hereafter refer, we think that it may be inferred that those charged with the administration of the act of 1886 construed it as meaning that a year's service was necessary to give the right to receive leave of absence, and that, if after earning and enjoying leave by a year's service, before the completion of another full year, the employee severed his connection with the service, he was not entitled to any proportional leave. On August 1, 1888, an act was approved, which, with its title, reads as follows (ch. 722, 25 Stat. 352):

"An act to extend the leave of absence of employees in the Government Printing Office to thirty days per annum.

"That the act entitled 'An act granting leave of absence to employees in the Government Printing Office,' approved June thirtieth, eighteen hundred and eighty-six, be so amended as to extend the annual leave of absence therein described to thirty days in each fiscal year: *Provided*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year."

Clearly this act was but an amendment of the act of 1886, and did not attempt to repeal that act or to extend its benefits to classes of employees not embraced by the prior act. Its object on its face was simply to extend the period of leave of absence from fifteen to thirty days and to confer upon the permanent employees who were entitled to leave, in accordance with the terms of the previous act, an additional right to enjoy the benefits of a *pro rata* leave, if thereafter they severed their connection with the service before they had completed another entire year's service so as to be entitled to that year's leave.

Undoubtedly the statute was thus construed by the Public Printer in its administration, since he continued in force the rule forbidding leaves of absence to temporary employees, and besides construed the statute as giving the right to proportional leave of absence to only a permanent employee who had served sufficient time to earn at least one annual leave. As the act of 1888 considered and dealt with the prior law, as administered by the Public Printer in pursuance of the authority conferred upon him by the act of 1886, and as the act of 1888 conferred only a new right in one particular—that is, as to fractional leaves to permanent employees—it is not probable that, if it was intended to overthrow the construction which the Public Printer had put upon the previous act, by formulating a rule expressly excluding temporary employees from the right to leave, that some express provision on that subject would not have been incorporated into the amendatory act.

What was intended by the act of August, 1888, is moreover shown by an act passed by the very same Congress at the same session. Thus, the appropriation act for the fiscal year ending June 30, 1889, became a law on October 2, 1888. That act contained an appropriation "To enable the Public Printer to comply with the provisions of the law granting 30 days' annual leave to the employees of the Government Printing Office." This was immediately followed by an appropriation "To pay *pro rata* leaves of absence to employees who resign or are discharged. (Decision of the First Comptroller.)" We have not been referred to the decision of the Comptroller to which the act adverts, nor have we been able to find it. But, the appropriation made in furtherance of the act 1888 shows that such act was designed for the benefit solely of the regular employees, and the authority to pay *pro rata* leaves of absence which it granted was such *pro rata* leaves of absence to employees who, from the nature of their previous and permanent service, might expect to earn a full annual leave but were prevented from doing so by resignation or discharge. Appropriations of like character, couched in substantially identical language, were made for the fiscal year ending June 30, 1890, (25 Stat. 980, 26 Stat. 159;) for the fiscal year ending June 30, 1891, (26 Stat. 371;) and for the fiscal year ending June 30, 1892, (26 Stat. 948.) Indeed, the appropriation act

for the last quarter of the fiscal year ending June 30, 1890, makes clear what was the legislative conception of the meaning of the right to *pro rata* leave, granted by the amendatory act of 1888, and the character of the employees embraced by it, for that act, after appropriating a sum to pay employees entitled to annual leave of absence, added the sum necessary to pay for the *pro rata* leaves of "such" employees "who resign or are discharged."

The contention then that temporary employees were embraced within the provisions of the act of 1888 not only is in conflict with the text of that act, but is opposed to the administrative construction placed upon the act by the Public Printer charged with its execution. It is, besides, directly repugnant to the legislative interpretation of that act manifested by Congress, during a period of nearly five years, in appropriating the money for its execution.

In the appropriation acts for the fiscal year ending June 30, 1893, 1894 and 1895, (27 Stat. 388, 572, 28 Stat. 41,) whilst appropriations were made for the allowance of annual leaves of absence to the employees of the Government Printing Office, in substance in the same words as found in the previous acts, the clause contained in the previous acts providing for the allowance of *pro rata* leaves to such employees was omitted. It followed, therefore, that, although the act of 1888 provided for *pro rata* leave to the regular employees, the appropriation acts for the years 1893, 1894 and 1895 were susceptible, by their silence on that subject, of the inference that they did not provide a sum to pay such *pro rata* leaves. The attention of Congress was evidently directed to this omission, since, on June 19, 1894, the deficiency appropriation act for the fiscal year of 1894, (28 Stat. 94,) contained the following:

"To enable the Public Printer to pay to the employees heretofore or now employed in the Government Printing Office since July first, eighteen hundred and ninety-three, such sums as may be due them for leaves of absence, notwithstanding the fact that thirty days' leave of absence, with pay, had been granted to such persons in said fiscal year on account of service rendered in the preceding fiscal year, and also to pay all employees of the said office any leave of absence which they may have failed to obtain from the lack of necessary appropriations or other cause, sixty-five thousand dollars, or so much thereof as may be necessary.

"Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. (28 Stat. 94.)"

This act also created no new class of beneficiaries of leaves of absence. It recognized the right of permanent employees, who had for annual services in a previous fiscal year earned leave, to be granted in a succeeding year in addition their *pro rata* leave when they were prevented from

completing a full year of service, by resignation or discharge, as provided in the previous statute. The act besides corrected the omission, if omission resulted, from the silence of the regular appropriation on the subject of *pro rata* leaves for the fiscal year ending June 30, 1894, and, looking to the future, provided a rule for the guidance of the Public Printer, making appropriations for leave of absence without particular specification applicable to *pro rata* leaves in cases where they were allowed by law. All the reasoning previously adverted to on the subject of the prior acts is applicable to this, and constitutes but another confirmation by Congress of the settled construction excluding temporary employees from the operation of the provisions as to leave of absence. It would seem from a document, to which we shall have occasion hereafter to more particularly advert, that the construction of the *pro rata* leave of absence clause was somewhat widened in its practical administration after that, from and including the fiscal year 1893, by allowing a *pro rata* leave to a permanent employee who had not served a year, and therefore had not earned the full leave of thirty days because of the termination of his permanent employment, by resignation or discharge, before the completion of the year. The exact origin of this broadening of the construction of the act has not been made manife but it is inferable that it arose from expressions used in an opinion of the acting Comptroller of the Treasury of date July 3, 1894. (Dec. First Comp. 1893–1894, p. 260.) Whilst the ruling in question was subsequently somewhat modified, such modification had no relation to the particular expressions in the opinion lending themselves to the construction in question. (III Dec. Comp. Treas. 28.)

In 1895 a general act relative to the conduct of the Government Printing Office was passed. (28 Stat. 601.) The twenty-third section of that act, in effect, re-enacted and recapitulated the existing laws on the subject of leaves of absence to the employees of the Government Printing Office, as follows:

"The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year, under such regulations and at such times as the Public Printer may designate, at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year. Such employees as are engaged on piece work shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session *pro rata* for the time of such employment: *And provided further*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year."

The text of this section contains nothing which can, we think, be construed as changing the past legislation so as to extend leaves of absence to temporary employees. It cannot in reason be argued that Congress, in

re-enacting the legislation in question, did not have in mind the class of employees entitled to leaves of absence, since in the act of 1895 it expressly reproduced the exception making a class of temporary employees—those regularly employed on the Congressional Record—beneficiaries of the leave of absence legislation, and excluded from the class of temporary employees so benefited those not regularly employed in such temporary work. When it is considered that the language thus re-enacted had been construed by the Public Printer, the officer charged with the execution of the previous statutes, for nearly ten years, as excluding temporary employees other than the particular class of such employees referred to in the statute, viz., those regularly employed on the Congressional Record, it follows that the re-enactment of the previous laws carried with it the settled administrative construction which had prevailed in their enforcement from the beginning. Here again it cannot in reason be said that the mind of the lawmaker did not address itself to the necessity of making a change in the previous laws where one was deemed necessary, since the act as re-enacted not only goes over the ground covered by the progress of the statutes since 1886, and re-enacts the legislative steps manifested in such progress, but also adds a new provision concerning accumulations of leaves of absence not contained in any prior statute.

When the deficiency appropriation act for the fiscal year ending June 30, 1895, was adopted on March 2, 1895, (28 Stat. 868,) the provision found in the appropriation act of June 19, 1894, was substantially reiterated, except in some particulars not necessary to be noticed, with no words contained therein giving rise to the implication that there was any intention to alter the uniform rule which had obtained from the beginning respecting leaves of absence, excluding temporary employees from the benefit of such leave, except the particular class of such employees enumerated in the previous statutes.

In the appropriation act for the year ending June 20, 1896, (28 Stat. 910,) the sum set apart was simply "to enable the Public Printer to comply with the provisions of the law granting thirty days' annual leave to the employees of the Government Printing Office." Doubtless, any specific provision as to payment of *pro rata* leaves of absence to regular employees who had severed their connection with the service was omitted because of the general provision in the prior statute authorizing the use of leave of absence appropriations for the payment of *pro rata* leaves. In the act of June 11, 1896, making appropriations for the fiscal year of 1897, (29 Stat. 413,) the same general language was used as contained in the previous act, making an appropriation applicable to payment of leaves of absence of employees in the Government Printing Office, but such provision was followed by a recapitulation of the previous statutes regulating the subject of leaves of absence to such employees, in the following language:

"The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year, under such regulations and at such times as the Public Printer may designate, at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year. Such employees as are engaged on piece-work shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment: *And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may hereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office, for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence."

It is language contained in the provision just quoted which the Court of Claims found to be new, and constrained it to decide that a temporary employee who had not been allowed leave of absence was nevertheless entitled to pay therefor by way of commutation. We do not stop now to consider that question, as we are not presently concerned with it. Now, an analysis of the act of 1896 discloses nothing which lends support to the argument that, in reiterating the previous law in this appropriation act, it was the intention of Congress to depart from the rule applied from the beginning by conferring the right to leave of absence on a mere temporary employee. On the contrary, this statute—like the previous ones—reiterates the exception in favor of a particular class of temporary employees, and by its silence is a further manifestation of the approval by the lawmaking power of the construction of the previous statutes resulting from the rule adopted by the Public Printer from the beginning, excluding temporary employees from the right to leave. And this recapitulation again demonstrates that the mind of Congress was addressed to the necessity of making such changes as it deemed wise, since there is a new provision allowing the legal representatives of deceased employees who were entitled to a leave to recover the amount due therefor.

From the review of the statutes which we have just made, our conclusion is that the assumption that temporary employees of the Govern-

ment Printing Office were entitled to leave, upon which the decision of the lower court necessarily rests, was mistakenly made, and therefore the judgment below was erroneous, unless it be that the plain text of the statutes, reiterated time and time again, and settled by years of administrative construction, is to be disregarded, in consequence of what is asserted to be a Congressional interpretation to the contrary, arising from an act passed in 1897, and the retroactive effect which it is claimed must necessarily follow as the result of this law and as a consequence of the fifth finding which the court below made.

To the contrary, we think an analysis of the matters relied upon serves but to confirm the construction which we have given to the acts of Congress which we have previously reviewed. In 1896, in the first session of the Fifty-fourth Congress, a resolution was passed by the Senate calling upon the Public Printer for information concerning the employees in the Government Printing Office who had failed to receive their annual leaves of absence during the fiscal years of 1890, 1891, 1892, 1893 and 1894, and asking a statement of the amount due each person therefor. Temporary employees during the years named could not have been included in the purposes of the resolution, since the general appropriation act passed at that very session contained the provision to which we have heretofore referred, re-enacting the leave of absence laws, containing no repudiation of the rule prevailing from the beginning excluding temporary employees from the right to leave of absence. To conceive that the inquiry concerned leaves not granted to temporary employees would be to assume that inquiry was made as to a class of employees who had been deprived of their right to leave of absence in the past, whilst at the same time such employees, by the re-enactment of the previous laws and the approval of the previous rule governing the Printing Office, had been declared at that session not to be entitled to such leave. Moreover, the fact that the resolution did not reach other years than 1890 to 1894 shows that it was not the denial of leave of absence to temporary employees which had been complained of and as to which the resolution made inquiry, because undoubtedly temporary employees had not received a leave of absence, not only prior to 1890, but also subsequent to 1894 and up to the time of the passage of the resolution. If the denial of leave to temporary employees had been the subject of the inquiry, it would have been concerning the past and existing evil, and not to a mere fraction thereof.

The reply of the Public Printer to the resolution was made at the following session of Congress, in 1897, and practically consisted of a transmittal of a report to the Public Printer made by the cashier of the Government Printing Office, which was printed by the Senate as a public document, (Sen. Doc. 59, 54th Congress, 2d Sess.,) and is largely repro-

duced in the brief of counsel for the appellee. The report, instead of confining itself to the years from 1890 to 1894, both inclusive, which were inquired about, proceeded to call attention to the subject of unpaid leave of absence claims prior to the year 1890, as follows:

"In view of the anticipated legislation looking forward to the liquidation of the unpaid leave of absence claims of present and former employees of this office, as indicated by Senate resolutions, it would seemingly appear in the interest of justice and equity that the scope of such legislation should not be limited or confined simply to the fiscal years of 1890 to 1894, inclusive, but that its provision should also embrace such accrued and unpaid leave of absence claims which were also lost and forfeited during the fiscal years of 1887, 1888 and 1889, and to that end I would respectfully submit for your further consideration a supplemental statement, in detail covering such leaves of absences as were unpaid in the fiscal years of 1887, 1888 and 1889."

This was followed by a statement of the amount which would be needed to pay such prior claims.

Now, it cannot be that the report had in view the refusal to give leave or pay for leave to merely temporary employees, since such claims, if they existed, would have covered a much longer period than that embraced in the report. It could not moreover have covered such claims, inasmuch as at that very time such leaves were not being allowed and could not be allowed under the rules of the office. What the report contemplated was loss of leave in the past sustained by permanent employees of the Government Printing Office, through a construction of the statute which no longer obtained or for failure of appropriations in particular fiscal years or other cause. Acting upon the report, an act was passed by Congress, which became a law on July 19, 1897, (30 Stat. 134,) authorizing the Public Printer to pay employees, former employees and the legal representatives of deceased former employees of the Government Printing Office such sums as may be due said employees and former employees, for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both exclusive, and appropriating a sum of money therefor.

Now we think from what has already been said concerning the resolution of inquiry, and the report made in answer thereto, which were the foundations of the act in question, that it is impossible to construe this act as at all affecting temporary employees without assuming that both Congress and the Public Printer, and indeed everybody concerned, were engaged at one and the same time in rectifying a wrong and in perpetuating the wrong for the future. The act, however, lends itself to no such deduction. Its provisions become clear, when the review of the legislation which we have made is considered. From that review it results that the exclusion of temporary employees from the right to leave of absence had prevailed from the beginning, and the rule so excluding had been ratified and approved by

Congress over and over again, whenever it considered the subject. But it was also true that, from 1886 to 1894, in which latter year the legislation as to leave of absence in the Government Printing Office crystalized, except as to a minor provision, added by the law of 1896, Congress had been called upon in each successive step when it considered the subject to broaden in favor of the permanent employees entitled to leave, the construction placed upon its prior action on the subject. Thus, permanent employees, at each successive consideration by Congress of the subject, had become entitled thereafter to leaves of absence, which had been denied the employees prior thereto. And the purpose of the appropriation act of 1897 was first, as an act of grace to equalize this condition where it had resulted from a change of legislation, and, second, by an act of justice to provide for the cases, where, by lack of appropriations, which the review we have made shows may have sometimes been the case, leaves of absence to permanent employees had not been provided for.

Without going into detail, it suffices to say, we repeat, that the confining of the appropriation in the act of 1897 to the years covered by the act, causes the conclusion just stated we think to be irresistible, since it conflicts with the conception that the act was intended or did embrace temporary employees who had been denied leave from the beginning, including the period down to the time of the passage of the appropriation act in question

It remains only to consider the fifth finding made by the court below. When the text of that finding is analyzed, we think it but embodies an inference of law deduced by the court from its consideration of the report of the Public Printer made in answer to the Senate inquiry and the court's construction of the provisions of the act of 1897. But the matters from which such legal inference was drawn, as we have seen, are in conflict with the import which we have given them. For instance, the language quoted in the finding and taken from the letter of the Public Printer in answering the resolution of inquiry of the Senate heretofore referred to, in full is as follows:

"Your attention is also called to the fact that during the fiscal years of 1890 to 1893, inclusive, many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period."

The construction adopted by the court below that this clause necessarily referred to temporary employees is dispelled by the history of the legislation and practice to which we have referred. That clause embraced only the permanent employees during the years in question to whom leave of absence had not been given, owing to the construction prevailing at the time named, which was either departed from by express changes made in subsequent acts of Congress, or by a construction thereafter placed upon

the same. This is the result of the concluding words of the passage relied on, viz., "which appears to have been the practice of the office during that period," excluding therefore temporary employees, since not only at that period but at all times from the beginning, and at the time the report was made, temporary employees were excluded from a right to leave of absence by the express rule of the office. If we were to treat the finding as one of fact, in view of the history of the legislation, the absence of any appropriation at any time to pay temporary employees for leaves of absence, the ever presence of the rule forbidding leave to such employees, and the findings as a whole of the court below, and what we deem to be the only implication deducible from the act of 1897, and the communication upon which the court below rested its construction, we should be obliged to say that the ultimate fact which the fifth finding embodies is not consistent with the other findings, and is not entitled to weight.

Our conclusion that temporary employees are not entitled to leaves of absence under the acts of Congress renders it wholly unnecessary to consider the second question which we at the outset proposed, that is, whether, if such employees were entitled to leave with regular pay, they had a claim for pay without leave against the United States because of the rule adopted for the government of the Printing Office by which no leave was allowed. However, whilst not deciding this question, we deem it our duty to direct attention to the fact that the significance which the court below attached to the language found in the act of 1896, and the statement that that language was new in the legislation on the subject, was, we assume, caused by overlooking the various appropriation acts between 1888 and 1894, which the court did not allude to in its opinion, where the language in question is to be found.

The decree of the Court of Claims is reversed, and the cause is remanded to that court with directions to dismiss the claimant's petition.

True copy.

Test:

Clerk Supreme Court, U. S.